



14 January, 2019.

Our Reference Number: FOI/2018/0464

Mr. Ken Foxe, Right to Know  
ken@righttoknow.ie

Dear Mr. Foxe,

I refer to the request you have made under the Freedom of Information Act 2014 for

“Copies of all cabinet records relating to the citizenship referendum of 2004.”

Following a search of the Department’s files 41 records within the scope of your request have been identified. The schedule attached provides a list of these records, their descriptions and the decision as to whether each record is being fully released, partially released or withheld. The schedule also highlights eight records already in the public domain.

In summary, I have decided to release 21 records to you in full, to part release four records and to withhold eight records.

Under the FOI Act, I am obliged to inform you that you may appeal this decision. In the event that you wish to make such an appeal, you may do so by writing to the Freedom of Information Unit, Department of the Taoiseach, Government Buildings, Upper Merrion Street, Dublin 2. The fee for internal review is €30.00 (or €10.00 for a medical card holder). You may make an appeal within four weeks (20 working days) of the date of this notification. If you make an appeal please refer to this letter and the reference number FOI/2018/0464. The making of a late appeal may be permitted in appropriate circumstances.

An appeal would involve a complete reconsideration of the matter by a senior member of the staff of this Department and the decision would be communicated to you within 3 weeks of receipt of an appeal.

Yours sincerely,

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Vivien Whelan  
Cabinet Secretariat  
Tel: [REDACTED]

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**Schedule of Records - FOI/2018/0464**

19	Appendix 2 - to Item no: 18 - "Scheme of an Irish Nationality and Citizenship Bill 2004"	March 2004	in Public Domain	
20	Govt. Decision - for Item no: 17 above	9 Mártá 2004	Yes	
21	<b>Note for Govt. Meeting</b> of 23/03/2004 - "Provisional timetable"	March 2004	Yes	
22	Informal Govt. Decision - "Proposed Constitutional Amendment on Citizenship"	23/03/2004	Yes	
23	<b>Govt. Memo</b> - "Proposed Referendum on the citizenship rights of children born in Ireland to non-national parents"	5 April 2004	Part Release	Section 28(2)(a) Section 31(1)(a)
24	Appendix 1 - to Item no: 23 - "Twenty-seventh Amendment of the Constitution Bill 2004"	April 2004	in Public Domain	
25	Appendix 2 - to Item no: 23 - "Irish Nationality and Citizenship (Amendment) Bill 2004"	April 2004	in Public Domain	
26	Appendix 3 - to Item no: 23 - Advice of the Attorney General	April 2004	No	Section 31(1)(a)
27	Appendix 4 - to Item no: 23 - Advice of the Attorney General	April 2004	No	Section 31(1)(a)
28	Appendix 5 - to Item no: 23 - Draft Declaration	April 2004	Yes	
29	Appendix 6 - to Item no: 23 - Suggested Timetable	April 2004	Yes	
30	Appendix 7 - to Item no: 23 - Seanad Motion	April 2004	in Public Domain	
31	Govt. Decision - for Item no: 23 above	6 Aibreán 2004	Yes	
32	Letter to - "Secretary to the Government"	23 April 2004	Yes	
33	Attachment - to Item no: 32 - "Certificate of Urgency"	23/4/04	Yes	
34	<b>Govt. Memo</b> - "Referendum on 27 <sup>th</sup> Amendment of the Constitution Statement for Information of Voters	23 April 2004	Yes	
35	Attachment - to Item no: 34 - Dáil/Seanad Motion	April 2004	in Public Domain	
36	Govt. Decision - for Item no: 34 above	27 Aibreán 2004	Yes	
37	<b>Aide Memoire</b> - "Steps to be taken following acceptance of Citizenship Referendum proposal "	28 June 2004	Yes	
38	Govt. Decision - for Item no: 37 above	29 Meitheamh 2004	Yes	
39	Govt. Memo - "Referendum Commission Report Twenty-seventh Amendment of the Constitution Bill 2004 - Irish Citizenship"	28/04/2005	Yes	
40	Attachment - to Item no: 39 - "Referendum Commission Report"	April 2005	in Public Domain	
41	Govt. Decision - for Item no: 39 above	3 Bealtaine 2005	Yes	

Schedule of Records - FOI/2018/0464

“Copies of all cabinet records relating to the citizenship referendum of 2004.”

(Ken Foxe, Right to Know)

Item no:	Description:	Date	Release Y/N	Basis of Redaction
1	<b>Aide Memoire</b> - “Claims for leave to remain in the State from non-national parents of Irish born children ”	3 Feabhra 2003	Part Release	Parts not relevant / Outside Scope
2	Attachment - to Item no: 1	03/02/2003	No	Outside Scope
3	Govt. Decision - for Item no: 1 above	4 Feabhra 2003	Yes	
4	<b>Govt. Memo Summary</b> - “Strategy for handling claims for leave to remain in the State on the basis of an Irish born child after the Supreme Court Judgements in L&O on 23 January 2003 ”	5 June 2003	No	Outside Scope
5	<b>Govt. Memo</b> - “Strategy for handling claims for leave to remain in the State on the basis of an Irish born child after the Supreme Court Judgements in L&O on 23 January 2003 ”	5 June 2003	Part Release	Parts not relevant / Outside Scope
6	Attachment - to Item no: 5	June 2003	No	Outside Scope
7	Govt. Decision - for Item no: 5 above	17 Meitheamh 2003	No	Outside Scope
8	Informal Govt. Decision - “Irish Born Children”	16/09/2003	Yes	
9	<b>Govt. Memo</b> - “Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents”	17 November 2003	Part Release	Section 28(2)(a) Section 31(1)(a) / Parts Not Relevant
10	Appendix 1 - to Item no: 9	November 2003	No	Outside Scope
11	Appendix 2 - to Item no: 9 - “extract from IOM Report”	November 2003	in Public Domain	
12	Appendix 3 - to Item no: 9	November 2003	No	Outside Scope
13	Informal Govt. Decision - “Citizenship of Irish Born Children”	02/12/2003	Yes	
14	<b>Note for File</b> re Govt. Meeting on 17/02/2004 - “Irish Citizenship of Children of Non-National Parents: Proposal for Constitutional Amendment”	16/02/2004	Yes	
	<b>Govt. Memo</b> - “Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents”	17 November 2003	See Item no: 9 above	Same Govt. Memo as Item no: 9 above
15	Govt. Decision - for Item no: 14 / Item no: 9 above	9 Nollaig 2003	Yes	
16	Informal Govt. Decision - “Irish Citizenship”	17/02/2004	Yes	
17	<b>Govt. Memo</b> - “Proposed Referendum on the citizenship rights of children born in Ireland to non-national parents”	8 March 2004	Yes	
18	Appendix 1 - to Item no: 18 - “Scheme of an Amendment of the Constitution Bill”	March 2004	in Public Domain	

**Oifig an Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dli**

**Ref. No. 67/115/2001**

**3 February 2003**

**Aide Memoire for the Government**

**Supreme Court Judgement of 23 January 2003 in the cases of L and O**

**Claims for leave to remain in the State from  
non-national parents of Irish born children**

**Introduction**

1. The Minister for Justice, Equality and Law Reform wishes to bring to the attention of the Government his preliminary assessment of the judgement of the Supreme Court in the cases of L and O given on 23 January 2003 and its effect on the immigration and asylum systems in Ireland. The Court found by a majority of five to two in favour of the Minister. It is a significant decision and the Minister is considering its effect in the context of the policy, legal and constitutional matters surrounding this issue in consultation with the Attorney General. This process is likely to take some weeks. The Minister will bring to Government in due course a more comprehensive assessment of the implications of the judgement, including its administrative implications, and his proposals for action on foot of it.

### **Constitutional amendment**

16. While assessing the possibilities which the Supreme Court judgement presents in order to address the issue, the Minister also wishes to consider further whether there is still a need for constitutional amendment to address the issue. It will be necessary to assess the effects of the judgement in practice on the attractiveness of Ireland as a destination for asylum seekers and illegal immigrants. The fact that the child will remain an Irish citizen with future entitlements to return to the State in future may remain a factor which makes Ireland more attractive than other Member States of the EU. This citizenship may grant entitlements to members of the child's family in future. The assessment of the effect of the judgement in practice will help to determine whether a constitutional issue still exists.

S180/20/10/0122D

4 Feabhra, 2003.

An Rúnaí Príobháideach

An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

I am to refer to the aide memoire ref. 67/115/2001 dated 3 February, 2003, submitted by the Minister for Justice, Equality and Law Reform concerning the Minister's preliminary assessment of the judgement of the Supreme Court of 23 January, 2003 in the cases of L and O and its effect on the immigration and asylum systems in Ireland and to inform you that, at a meeting held today, the Government noted the contents of the aide memoire.

**Dermot McCarthy**

Ard-Rúnaí an Rialtais

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An Rúnaí Príobháideach

An tAire Airgeadais, An Tánaiste agus Aire Fiontar; Trádála agus Fostaíochta,

An tArd Aighne, An tAire Sláinte agus Leanaí

Mar eolas don Aire

**Oifig an Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí**

**Ref No. 67/115/2001**

**5 June 2003**

**Memorandum for Government**

**Strategy for handling claims for leave to remain in the State  
on the basis of an Irish born child  
after the Supreme Court Judgements in L&O on 23 January 2003**

2. In his Aide Memoire dated 3 February 2003 the Minister brought to the Government his preliminary assessment of the implications of the Supreme Court judgement of 23 January 2003 in the cases of *L&O* for the handling of claims for leave to remain from the non-national parents of Irish born children. The Minister now wishes to set out his proposals for action in the light of that assessment.

**Any Constitutional or statutory requirements**

38. The Minister wishes to consider further the issue of constitutional amendment to address the issue. It will be necessary to assess the effects of the proposed strategy in practice on the attractiveness of Ireland as a destination for asylum seekers and illegal immigrants. Whether there is a need for legislation requiring parents subject to deportation to bring their children with them will also be considered in the light of experience. The fact that the child will remain an Irish citizen, with a future entitlement to return to the State, may remain a factor which makes Ireland more attractive than other Member States of the EU. This citizenship may grant entitlements to members of the child's family in the future. The Minister will bring his assessment to Government at a later date.

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**Aide-Mémoire for the Government**

**28 June 2004**

**Steps to be taken following acceptance of Citizenship Referendum proposal**

**Purpose of Aide-Mémoire**

1. The Minister for Justice, Equality and Law Reform wishes to inform the Government of the proposed timetable for the implementing citizenship legislation following the acceptance by the People of the Referendum proposal in that regard.
2. The President signed the 27<sup>th</sup> Amendment of the Constitution Bill into law on 24 June 2004. The way is now constitutionally clear to bring forward a Bill on the lines of the draft approved by the Government in its decision (S. 180/20/10/0739) of 6 April 2004.
3. Following is an outline of the matters that have to be addressed as part of the process of developing the draft Bill published as part of the Government's Proposals document into a Bill to be initiated in the Dáil or Seanad.

**Technical aspects**

4. There are a number of technical aspects of the draft Bill as published that need to be addressed further as follows:
  - the practicalities of asserting a verifiable claim to entitlement to Irish citizenship based on lawful residence of a parent in the North need to be teased out with the UK immigration authorities before the provisions of the Bill relating to this can be settled with Parliamentary Counsel;
  - the question of provisions to rule out the operation of an investment-based naturalisation scheme (Senator Quinn's PMB) needs to be settled with Parliamentary Counsel;
  - other aspects of the present Irish Nationality and Citizenship Act (e.g. citizenship of foundling children, citizenship rights of births on Irish-registered vessels) need to be examined to make sure that no lacunae will exist in the wake of the Constitutional change, or otherwise to avail of the opportunity for updating.

In addition, matters may arise out of the consultations signalled below which may give rise to further drafting changes.

**Consultations**

5. The Government is committed to holding discussions with the SDLP on the content of the Bill. The timing and form of those discussions will need to be settled in discussions with the Minister, but it would be useful if they could be complete within the coming weeks, always having regard to the sensitivities (see *Timetable* below).
6. The Irish Human Rights Commission was asked in early April to give observations on the draft Bill and have indicated that they will have observations. In the immediate wake of the change to the Constitution made by referendum, it would be appropriate to write again to the Commission seeking early observations (see *Timetable* below) so that any observations can be taken into account in settling the final form of the legislation.
7. It may be that other bodies will also wish to be consulted on the draft Bill.

**Timetable**

8. On the basis that there is a need to proceed with the legislation as a matter of priority, the following is offered by the Minister as a tentative timetable.

<b>Step</b>	<b>To be achieved by:</b>
Finalise consultation process	Mid July 2004
Complete technical discussions with UK authorities	Mid July 2004
Agree final draft with Parliamentary Counsel and circulate draft Memo to Govt	Mid September 2004
Obtain Government approval to text of Bill and initiate in (say) Dáil	End September 2004
Passage by Dáil (assumes resumption in late September/early October)	End October 2004
Passage by Seanad and enactment	Mid November 2004
Complete administrative arrangements, make regulations (if any) and commence Act	Mid December 2004

# Appendix 5

## DRAFT

### DECLARATION OF THE PARTIES TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND

Whereas an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland was done at Belfast on the 10<sup>th</sup> April 1998

Whereas the two Governments have considered Article 4(1)(b) of that Agreement and the amendments to the Constitution of Ireland set out in Annex B to the Section entitled "Constitutional Issues" of the Multi-Party Agreement and the current effects and consequences of Article 2 of the Constitution and the acquisition of rights to citizenship of children of parents without a sufficient connection with the island of Ireland.

The two Governments hereby give the following legal interpretation:

That it was not their intention in making the said Agreement that it should impose on either Government any obligation to confer nationality or citizenship on persons born in any part of the island of Ireland whose parents do not have a sufficient connection with the island of Ireland.

And therefore the two Governments declare that the proposal to amend Article 9 of the Constitution of Ireland so as to provide that a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or is entitled to be an Irish citizen, is not entitled to Irish citizenship or nationality, unless otherwise prescribed by law, is in accordance with the intention of the two Governments in making the said Agreement and that this proposed change to the Constitution is not a breach of the said Agreement or the continuing obligation of good faith in the implementation of the said Agreement .

The British Government notes that the Irish Government confirms that the rights of all persons referred to in Article 1 (vi) of, and Annex 2 to, the said Agreement will be preserved by legislation.

# Appendix 6

## Proposed Constitutional Amendment on Citizenship Suggested timetable

Step to be taken	Critical success factors	Target date
Publish text of Amendment of the Constitution Bill and policy statement with text of implementing Bill	<ul style="list-style-type: none"><li>Agreement must be secured with British authorities on draft interpretative declaration</li></ul>	15 April
Establish Referendum Commission	<ul style="list-style-type: none"><li>Minister for Environment, Heritage and Local Government cannot make establishing order until Bill initiated</li></ul>	15 April
All stages in Dáil	<ul style="list-style-type: none"><li>Dáil rises for Easter recess on 8 April until 27 April</li><li>Second Stage 27 April</li><li>Committee Stage 28 April</li><li>Report and final stages 29 April</li></ul>	29 April
All stages in Seanad	<ul style="list-style-type: none"><li>Second Stage 4 May</li><li>Committee Stage 5 May</li><li>Report and final stages 6 May</li></ul>	6 May
Question put to people	<ul style="list-style-type: none"><li>Bill must be passed by Oireachtas a minimum of 30 days before it is put to the people.</li></ul>	11 June

**SUBMISSION TO THE GOVERNMENT**

**CERTIFICATE OF URGENCY**

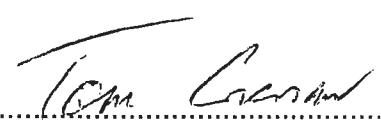
**SUBJECT: Memorandum for Government  
Referendum on 27<sup>th</sup> Amendment of the Constitution  
Statement for Information of Voters**

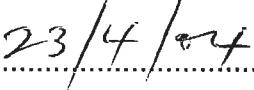
TAOISEACH,

It is desired to have the documents relating to the above matter circulated and to have it placed on the Agenda for the Meeting of the Government to be held on Tuesday 27<sup>th</sup> April, 2004.

I certify that the matter is urgent and that it must be considered at the meeting mentioned above for the reason that the motion is required to be taken at the Fifth Stage of the 27<sup>th</sup> Amendment of the Constitution Bill 2004.

I also certify that the Department could not have taken steps to allow for the usual period of notice being given for the reason of time constraints.

Signature: ..... 

Date: ..... 

S180/20/10/0739

3 Bealtaine, 2005.

An Rúnaí Príobháideach  
An tAire Comhshaoil, Oidhreachta agus Rialtais Áitiúil

I am to refer to the memorandum for information ref. F407/8 dated 28 April, 2005, submitted by the Minister for the Environment, Heritage and Local Government and to inform you that, at a meeting held today, the Government noted the report of the Referendum Commission on its work in relation to the referendum on the Twenty-seventh Amendment of the Constitution Bill 2004 held on 11 June, 2004.

**Dermot McCarthy**  
Ard-Rúnaí an Rialtais

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An Rúnaí Príobháideach  
An tAire Airgeadais, An Tánaiste agus Aire Sláinte agus Leanaí  
Mar eolas don Aire

6 Aibreán, 2004.

An Rúnaí Príobháideach

An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

I am to refer to the memorandum dated 5 April, 2004, submitted by the Minister for Justice, Equality and Law Reform and to inform you that, at a meeting held today, the Government

- (1) approved the text of the Twenty-Seventh Amendment of the Constitution Bill 2004, attached at Appendix 1 to the memorandum, and subject to agreement referred to at (3) below, authorised the Minister to initiate the Bill in Dáil Éireann and to have it circulated to Deputies;
- (2) approved
  - (a) the text of the Irish Nationality and Citizenship (Amendment) Bill 2004, attached at Appendix 2 to the memorandum, subject to the terms of paragraph 4.3 of the memorandum and any technical or textual changes being agreed between the Minister and the Attorney General, and
  - (b) subject to agreement referred to at (3) below, its publication in draft form, along with explanatory material, in conjunction with the publication of the Twenty-Seventh Amendment of the Constitution Bill 2004 for the purpose of informing public debate on the Referendum proposal;
- (3) noted the steps to be taken by the Minister for Foreign Affairs, outlined at paragraphs 5.1 to 5.4 of the memorandum, to secure the agreement of the British authorities that the proposal to amend Article 9 of the Constitution is in accordance with the intention of the two Governments in making the 1998 British-Irish Agreement;

- (4) approved the announcement of its intention to hold the Referendum arising out of the Twenty-Seventh Amendment of the Constitution Bill on 11 June, 2004, along with the local Government and European Parliament elections;
- (5) approved the establishment of a Referendum Commission, on foot of an order to that effect to be made by the Minister for the Environment, Heritage and Local Government on publication of the Twenty-Seventh Amendment of the Constitution Bill 2004, with a budget of €4m; and
- (6) approved the tabling of a Government amendment, on the lines set out at Appendix 7 to the memorandum, to the Seanad opposition motion.

**Dermot McCarthy**  
Ard-Rúnaí an Rialtais

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An Rúnaí Príobháideach  
An tAire Airgeadais, An Tánaiste agus Aire Fiontar; Trádála agus Fostaíochta,  
An tArd Aighne, An tAire Stáit ag Roinn an Taoisigh (M. Hanafin), An tAire  
Gnótháí Eachtracha  
Mar eolas don Aire

9 Márta, 2004.

An Rúnaí Príobháideach

An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

**SECRET**

I am to refer to the memorandum dated 8 March, 2004, submitted by the Minister for Justice, Equality and Law Reform concerning citizenship rights of children born in Ireland to non-national parents and to inform you that, at a meeting held today, the Government approved

- (1) the drafting of a Bill to amend the Constitution on the lines of the general scheme attached at Appendix 1 to the memorandum; and
- (2) the drafting of an implementing Bill, on the lines of the general scheme attached at Appendix 2 to the memorandum, with a view to its publication in draft form, along with explanatory material, in conjunction with the publication of the Bill at (1) above for the purpose of informing public debate on the Referendum proposal.

**Peter Ryan**

Rúnaí Cúnta an Rialtais

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An Rúnaí Príobháideach

An Tánaiste agus Aire Fiontar; Trádála agus Fostaíochta, An tAire Airgeadais,

An tAire Stáit ag Roinn an Taoisigh (M. Hanafin), An tArd Aighne

Mar eolas don Aire

S180/20/10/0122E

9 Nollaig, 2003.

An Rúnaí Príobháideach

An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

**SECRET**

I am to refer to the memorandum ref. 67/115/2001 dated 17 November, 2003, submitted by the Minister for Justice, Equality and Law Reform concerning Irish Citizenship of children of non-national parents and to inform you that, at a meeting of the Government held today, this item was withdrawn from the agenda.

**Dermot McCarthy**  
Ard-Rúnaí an Rialtais

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An Rúnaí Príobháideach

An tAire Airgeadais, An Tánaiste agus Aire Fiontar; Trádála agus Fostaíochta,  
An tArd Aighne

Mar eolas don Aire

S180/20/10/0739

27 Aibreán, 2004.

An Rúnaí Príobháideach  
An tAire Comhshaoil, Oidhreachta agus Rialtais Áitiúil

I am to refer to the memorandum ref. F489 dated 23 April, 2004, submitted by the Minister for the Environment, Heritage and Local Government and to inform you that, at a meeting held today, the Government authorised the Minister to arrange the moving of a motion in Dáil Éireann and Seanad Éireann to prescribe a statement for the information of voters at the forthcoming referendum on the 27th Amendment of the Constitution, subject to any amendments of a drafting nature which may be agreed with the Attorney General.

**Dermot McCarthy**  
Ard-Rúnaí an Rialtais

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An Rúnaí Príobháideach  
An tAire Airgeadais, An Tánaiste agus Aire Fiontar; Trádála agus Fostaíochta,  
An tAire Stáit ag Roinn an Taoisigh (M. Hanafin), An tArd Aighne  
Mar eolas don Aire

S180/20/10/0758

29 Meitheamh, 2004.

An Rúnaí Príobháideach

An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

I am to refer to the aide memoire dated 28 June, 2004, submitted by the Minister for Justice, Equality and Law Reform concerning the tentative timetable for implementing citizenship legislation following acceptance of the Citizenship Referendum proposal and to inform you that, at a meeting held today, the Government noted the contents of the aide memoire.

**Peter Ryan**

Rúnaí Cúnta an Rialtais

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An Rúnaí Príobháideach

An tAire Airgeadais, An Tánaiste agus Aire Fiontar; Trádála agus Fostaíochta, An tAire Stáit ag Roinn an Taoisigh (M. Hanafin), An tArd Aighne, An tAire Gnótháí Eachtracha

Mar eolas don Aire

5 April 2004

**Proposed Referendum on the citizenship rights of children born in Ireland to  
non-national parents**

**Decision sought**

1. The Minister for Justice, Equality and Law Reform asks the Government to—
  - (i) approve the text of the Bill to amend the Constitution (Appendix 1), and (subject to the agreement referred to at (iii) below) its initiation in the Dáil and circulation to Deputies;
  - (ii) approve the text of the draft implementing Bill (Appendix 2), subject to any technical or textual changes that may be agreed between the Minister and the Attorney General, and (subject to the agreement referred to at (iii) below) its publication in draft form, along with explanatory material, in conjunction with the publication of the Bill at (i) above for the purpose of informing public debate on the Referendum proposal;
  - (iii) note the steps to be taken by the Minister for Foreign Affairs (detailed at paragraphs 5.1 to 5.4 below) to secure the agreement of the British authorities that the proposal to amend Article 9 of the Constitution is in accordance with the intention of the two Governments in making the 1998 British-Irish Agreement
  - (iv) approve the announcement of its intention to hold the Referendum arising out of the Bill at (i) above on 11 June 2004 along with the local Government and European Parliament elections;
  - (v) approve the establishment of a Referendum Commission, on foot of an order to that effect to be made by the Minister for the Environment, Heritage and Local Government on publication of the Bill at (i) above, with a budget of €4m.
  - (vi) approve the tabling of a Government amendment to the Seanad opposition motion scheduled for debate on Wednesday 7 April on the lines set out in Appendix 6.

**Background**

2. At its meeting on 9 March 2004, the Government approved the drafting of a Bill to provide for an amendment to the Constitution to deal with the impact of the right to Irish citizenship based solely on birth in the island of Ireland, and in addition the drafting of an implementing Irish Nationality and Citizenship Bill to give effect to the proposed Constitutional amendment, both on foot of Schemes approved by Government on that occasion.

**Referendum Bill**

- 3.1 The text of the Bill to amend the Constitution provides for the amendment of Article 9 by the insertion of the following words:

2. 1º Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and its seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be

an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.

<sup>20</sup> This section shall not apply to persons born before the date of the enactment of this section.

While it differs from the draft text contained in the Scheme approved by Government, the differences are textual only and do not affect the substance of the proposal.

3.2 Consideration has been given in the drafting process by the Minister as to whether a measure of detail (e.g. a reference to the 3-year residence requirement in the draft implementing Bill) could be included in the text of the Constitutional amendment; but the complexity is such that it has been found not possible to take that approach.

#### **Draft Implementing Bill**

4.1 The draft implementing Bill is based substantially on the Scheme approved by Government, but differs from it in the following respect. The Scheme provided that an entitlement to Irish citizenship would arise for persons born to non-national parents who had a minimum period of lawful residence in the State at the time of the birth; thus the child of non-national parents lawfully resident in Northern Ireland would not acquire that entitlement. <sup>1</sup>

4.2 I

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1  
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4.3 The Minister for Foreign Affairs is of the view—on the basis of equality of treatment as between persons born to families resident in the North and in the South—that the three-year residence requirement should apply also in respect of residence in Northern Ireland that meets criteria similar to those applying to residence in the State. The Minister accepts this. Suitable amendments to the text of the draft implementing Bill are in course of preparation, and the proposal is that they will be incorporated in the text of that draft Bill when published.

- 5.3 The British authorities will accordingly be approached through the Department of Foreign Affairs to secure their willingness to subscribe jointly with the Irish Government to a joint interpretative declaration, the agreed draft of which is at Appendix 5.
- 5.4 It would be inappropriate to publish the Amendment of the Constitution Bill in advance of that declaration being signed.

#### **Publication plans**

6. The proposal is to initiate the Amendment of the Constitution Bill in the Dáil as soon as possible, having regard to the consideration at 5.4 above. It is also proposed to prepare for publication at the same time a policy statement which will set out the background to the proposal and the Government's plans for the implementing Bill, the text of which will be included in the statement.

#### **Referendum Commission**

- 7.1 Section 2 of the Referendum Act 1998 provides that the Minister for the Environment, Heritage and Local Government may by order establish a Referendum Commission whenever a Bill to amend the constitution is published. The present proposal is one eminently suited to such a Commission. The Ombudsman's Office (which provides the secretariat for such Commissions) has estimated, based on previous experience, that a budget of €4m. will be sufficient to cover the expenses involved in the preparation of publicity material and its dissemination to the public.

7.2 The Minister considers it essential that the Referendum Commission be established as soon as possible so that the necessary groundwork can be done by it in sufficient time to permit the holding of the Referendum in conjunction with the local government and European Parliament elections on 11 June 2004.

**Time-table**

8.1 The time-table at Appendix 6 is suggested for the management of the process of passage of the legislation through the Oireachtas in sufficient time for the holding of the Referendum on 11 June. Specific aspects are discussed in the following paragraphs.

8.2 While it is desirable to publish the Amendment of the Constitution Bill as early as possible, it would be inappropriate to publish it before securing the joint declaration with the British authorities referred to at paragraph 5.3 above. It would also be undesirable to publish the Amendment of the Constitution Bill on its own without at the same time publishing the draft text of the proposed implementing Bill. The policy statement (paragraph 6 above) is of a kind that must be published in both Irish and English under section 10 of the Official Languages Act 2003. While every effort is being made to secure that the publication date will be next Thursday 8 April, there may be advantages to holding off publication until the following week.

8.3 The existence in the public domain of the text of the draft implementing Bill will help to inform debate in the Oireachtas on the Amendment of the Constitution Bill, but the draft implementing Bill will not itself be the subject of debate. Given that the Amendment of the Constitution Bill is itself short and addresses a net issue, it is reasonable to expect that it will not require unduly lengthy debate in either House. The relevant elements of the suggested time-table are based on that assumption.

8.4 By section 10 of the Referendum Act 1994, the Minister for the Environment, Heritage and Local Government must make an order, following the passage through the Oireachtas of an Amendment of the Constitution Bill, specifying a polling day that is at least 30 and not more than 90 days after the making of the order. In order to secure that the present proposal can be put to the people on 11 June, then, the Bill must be passed by the Oireachtas by 12 May at the latest.

8.5 There has been considerable public commentary around the possible holding of the Referendum on the same day as the local and European elections, much of it centring on the perceived fear that to do so would encourage the development of racism and the possibility of that factor affecting the conduct if not also the outcome of the local and European elections. The Minister is of the view that it is in the nature of local elections on their own that they provide ample opportunity for the flowering of such latent racist tendencies as may already exist (as well as other minority or local issues) in Irish politics, and that the running of this Referendum proposal at the same time would make no difference in that regard. On the other hand, there is considerable expense involved in going separately to the people on a Referendum issue, and it would be imprudent to pass up the opportunity presented by the fact of the elections on 11 June to put this matter to the people at the same time. While the possibility exists of a Presidential election later in the year, which would if held offer another opportunity to put this question to the people, the same arguments against that timing are likely to be made; there is however no certainty that such an election will in fact be necessary. In all, the Minister recommends that the matter be put to the people on 11 June.

**Seanad motion**

9. Opposition senators have tabled a motion in the terms set out at Appendix 7. It is scheduled for debate on Wednesday 7 April. The Minister considers that the appropriate tactic for addressing the motion is for the Government side to propose an amendment to it, a suggested text of which also appears at Appendix 7.

**Consultation with other Departments**

10. The proposals in the Amendment of the Constitution Bill and the draft implementing Bill have been drawn up in close consultation with the Office of the Attorney General (whose advices are attached at Appendices 3 and 4) and the Department of Foreign Affairs.

**Oifig an Aire Dlí agus Cirt, Comhionnanais agus Athchóirithe Dlí: Office of the  
Minister for Justice, Equality and Law Reform**

8 March 2004

**Proposed Referendum on the citizenship rights of children born in Ireland to  
non-national parents**

**Decision sought**

1. The Minister for Justice, Equality and Law Reform seeks the approval of the Government to—
  - (i) draft a Bill to amend the Constitution on the lines of the Scheme at Appendix 1 to this Memorandum, and
  - (ii) draft an implementing Bill, on the lines of the Scheme at appendix 2 to his Memorandum, with a view to its publication in draft form, along with explanatory material, in conjunction with the publication of the Bill at (i) above for the purpose of informing public debate on the Referendum proposal.

**Background**

2. At its meeting on 17 February 2004, the Government had before it a proposal to prepare the scheme of a Referendum Bill to provide for an amendment to the Constitution to deal with the impact of the right to Irish citizenship based solely on birth in the island of Ireland, and in addition the preparation of a Scheme of an implementing Irish Nationality and Citizenship Bill to give effect to the proposed Constitutional amendment. Those Schemes are now attached for Government approval.

**Referendum Bill**

3. While the Scheme of the Bill to amend the Constitution is based on the draft text indicated in the Memorandum considered by the Government at its meeting on 17 February, it raises the possibility that more detail might be included in the proposal to be put to the people. The Minister sees advantage in a text which would contain some guiding principles as to the lines on which that legislation should be prepared. The proposal is that the drafting of this Bill and of the implementing Bill (see below) would proceed in tandem so as to take this possibility into account.

**Implementing Bill**

4. The Scheme of a draft implementing Bill is attached at Appendix 2. The principal feature of that Bill is at Head 1, which sets out the limitations proposed on the entitlement to Irish citizenship of children born in Ireland to parents neither of whom was Irish at the time of the birth. The Head proposes that there should be a qualifying period of lawful residence in the State prior to the birth: that period would be 3 years lawful residence in the State immediately preceding the birth. Special provision is also made for the situation where a parent predeceases the birth but would have had the requisite period of lawful residence in the State had he or she been alive at the time of the birth. Special provision is also made for the acceptance of a declaration in lieu of official immigration records of presence in the State for UK citizens or other EEA nationals who are in Ireland on foot of EU Treaty rights and who are not obliged by Irish law to register with the Garda Síochána.

5. The Minister draws attention to the fact that, under this proposal, a child born in Northern Ireland to parents neither of whom was Irish or entitled to be Irish would not acquire an entitlement to be an Irish citizen. While such parents might well be lawfully in Northern Ireland by reference to UK immigration law, the Minister considers it wrong in principle that a provision of Irish citizenship law might depend on compliance by the parents with the law of a foreign state. That said, he recognises that this issue may well give rise to difficulties. He proposes to work closely with the Attorney General and with the Minister for Foreign Affairs during the drafting process to ensure that any such potential difficulties are avoided or minimised.
6. The Scheme also contains, at Head 2, a proposal to limit the scope of the present section 13 of the 1956 Act, which treats persons born on Irish-registered ships and aircraft as if they were born in Ireland. This has the effect at present that all such children are entitled to be Irish citizens. The Head proposes instead that only children born on Irish craft who would otherwise be stateless will acquire Irish citizenship.
7. The opportunity can be taken in this Bill to address the substance of the Private Member's Bill tabled by Senator Fergal Quinn in October 2003, the aim of which was to put beyond possibility the re-institution of an investment-based citizenship scheme. The Government, at its meeting of 21 October 2003, accepted the Minister's proposal that that Bill be supported in principle at Second Stage and that the Government would at a suitable opportunity bring forward its own proposal to achieve the Senator's aim.

#### **Publication strategy**

8. The Minister proposes that at the same time as the Amendment of the Constitution Bill is published, an explanatory booklet would also be produced including the text of the proposed implementing Bill and also possibly the text of the Irish Nationality and Citizenship Act 1956 as it would read following amendment by the implementing Bill, and accompanied by detailed explanatory notes on the proposal. The aim of this publication would be to ensure public awareness of the precise nature of the proposal and to inform public debate at the earliest possible point in the process. This is in line with the approach taken in recent referenda.

#### **Consultation with other Departments**

9. The drafting process will allow the opportunity for suitable consultation with interested Departments, the fruits of which will be incorporated in the Memorandum seeking approval to the drafted texts of the Bills when complete.

**Oifig an Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí**

**Ref No. 67/115/2001**

**17 November 2003**

**Memorandum for the Government**

**Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents**

**Decision sought**

1. The Minister for Justice, Equality and Law Reform asks the Government to
  - (a) note the developments in relation to the processing claims for leave to remain in the State from the non-national parents of Irish born children following the Government's Decision (S180/20/10/0122D) of 17 June 2003 on his Memorandum for the Government on a strategy for the handling of such claims after the Supreme Court judgements in L&O on 23 January 2003;
  - (b) approve the preparation of a scheme of a Referendum Bill to provide for appropriate amendment to the Constitution to circumscribe the right to Irish citizenship based solely on birth on the island of Ireland; and
  - (c) approve the preparation of a scheme of an Immigration and Citizenship Bill to amend existing citizenship legislation on foot of the proposed amendment to the Constitution and to make necessary changes to immigration legislation related thereto.

**Background**

2. The Programme for Government contains the following statement:

“We will keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish-born child and initiate all-party discussions on the issue of such constitutional or other measures which might be required.”

3. The Minister has been keeping this issue under review, in particular in relation to the outcome of the Supreme Court judgement of 23 January 2003 in the cases of L&O which clarified the position of the non-national parents of Irish born children. In his Memorandum for the Government of 5 June 2003 the Minister brought to Government his proposed strategy for the handling of claims for leave to remain in the State on the basis of an Irish born child in the light of the Supreme Court judgement. This followed detailed consideration of the issues in the Minister's Department, discussions with the Attorney General on the legal issues and discussions with the Department of Finance on the resources issues arising.

4. The Government Decision approving the strategy confirmed that there would no longer be a separate process for considering claims from non-national parents for leave to remain in the State on the basis of the birth of a child in Ireland. The Government decided that such claims would not be considered where they came from parents (including asylum seekers) who had an alternative legal basis for remaining in the State. Claims from persons who did not have a legal basis for remaining in the State would only be considered in the context of representations on a Ministerial proposal to deport them. On 18 July 2003 a notice was published setting out the details of this policy as regards those persons whose claims had not been processed to finality.

**Action on foot of Government strategy**

5. Following the announcement of the Government's policy and the publication of the notice on 18 July 2003, the Department began an initial processing of claims. This centred on dealing with the most recent applications. Between 18 July and the end of October 918 letters were sent to persons with an alternative legal basis for remaining in the State informing them that there was no longer an "Irish born child" status and that their claims would not be considered. Some 347 letters were sent to persons informing them that the Minister was considering deporting them. In 171 cases the persons concerned made representations to the Minister. To date there has been 1 deportation and others are expected shortly on foot of deportation orders made.

6. During August 2003 the Department of Justice, Equality and Law Reform and the Department of Finance discussed the provision of the additional staffing required for the implementation of the Government's strategy. It was agreed that 150 additional staff would be provided for a period of one year. The Department of Finance decided that this would be implemented by way of a levy on other Government Departments and has written to the Departments concerned seeking staff. The Department of Justice, Equality and Law Reform has been in discussions with the Office of Public Works about the provision of accommodation for these new staff. It is intended to use accommodation in Lower Grand Canal Street which is due to become available during November following minimal refurbishment. It is expected that around 50 staff will begin work during November with the remaining staff joining over the coming months. The Department of Justice, Equality and Law Reform is making preparations for the training of the new staff on arrival.

7. The Department has also agreed a new voluntary return programme with the International Organisation for Migration (IOM) which aims to assist families where non-national parents have claims for leave to remain in the State on the basis of their parentage of an Irish born child. It will operate for a period of 6 months commencing on 1 November and there is an incentive in the form of assistance for reintegration of the families into the parents' countries of origin. This will not be a cash payment, but rather training and other assistance. The programme aims to assist up to 250 families, or up to 750 individuals, to return to the parents' countries of origin.

15. The Supreme Court judgement in the cases of L&O brought a valuable clarification of the position as regards the entitlements of non-national parents of an Irish born child to remain in the State. The actions undertaken on foot of it have had some effect in lessening the attraction of illegal migration to Ireland. However, expectations that the number of non-national births in Ireland would drop significantly after L&O have not been fulfilled. Two out of three non-nationals births are to persons other than asylum seekers. The prospect of Irish citizenship (and thus EU citizenship) for children born here seems to have an attraction independent of possible parental residence.

#### **The situation internationally**

16. The feature of Irish citizenship law which grants an entitlement to citizenship to all persons born on the island of Ireland is unique in the European Union, and unusual world-wide. Most other countries have laws whereby citizenship is acquired by descent from an existing citizen, with place of birth either wholly or largely irrelevant. This makes Ireland an attractive target destination for persons wishing to establish residence in the EU and with no other basis, or a less certain basis, for doing so elsewhere. All other Member States of the EU either provide citizenship to the child of a citizen or permanent resident only or else provide citizenship to a child born on its territory only after a period of residence in the state concerned and / or after attaining a certain age.

17. The most recent survey of the situation in a range of other states is contained in the recent IOM Report of an International Comparative Study of Migration Legislation and Practice, which was commissioned by this Department as part of the development of comprehensive new immigration legislation and was published in August 2002. The relevant extract from the IOM report is attached in appendix 2. It should also be noted that a number of other states have amended their law to exclude the possibility of the children of illegal

immigrants obtaining citizenship by birth on the territory of the state (UK 1981, Australia 1986). It is clear from the report that within the European Union, Ireland is the only State where citizenship can be achieved primarily through birth within the State.

18. The Justice and Home Affairs Council following the events of 11 September 2001 in the US called on the Member States to strengthen border controls and to exercise vigilance in the issuing of residence permits. There are serious concerns that Ireland's unique situation among EU Member States in regard to citizenship could have serious implications for the integrity of our own immigration controls and for national and international security and could make Ireland a target destination for those wishing, for whatever reason, to secure residence within the EU.

21. The fact remains that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other Member State of the European Union - in terms of the child's entitlement to Irish and European citizenship and the perceived benefits of this for the parents now or in the future. This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State. The Minister is of the view that this attraction must now be eliminated.

24. Consequently the Minister again evaluated the options available to deal with this situation and sought the views of the Attorney General on two broad strategic options in this regard : to legislate to discourage non-nationals from having children here in the expectation of Irish citizenship (and EU citizenship) for their children; or, alternatively, to promote a constitutional referendum to allow for a significant legislative change.

**The legislative option**

25. This option would attempt to legislate as far as possible in a manner which would exclude from automatic Irish nationality and citizenship any person who was born to parents neither of whom was or was entitled to be an Irish citizen at the time of the persons birth, subject to such exceptions as might be provided for in the statute (including the obligation to avoid statelessness). This would, on the face of it, amount to a legislative attempt to roll back the availability of citizenship to those enjoying the “birthright” to Irish nationality conferred on persons born in Ireland (including its islands and seas) which is expressly acknowledged or conferred by Article 2 of the Constitution as amended.

26. In considering this option the Minister considered the existing meaning and import of the phase “entitlement and birthright” as used in Article 2 and whether “nationality” and “citizenship” were divisible for any purpose relevant to any Irish born child issue, given that all Article 2 confers is a right to nationality or, in particular, to be part of the Irish nation. The Minister also considered whether an “entitlement and birthright” creates an absolute derivative right for the parents of an Irish born child to opt for Irish citizenship in the case of an infant or legal minor bearing in mind, especially, the potentially onerous implications of

**Legislation to accompany constitutional change**

30. The Minister's view is that any legislation to accompany constitutional change should be carefully drafted to achieve the following aims :

- (1) a clear exclusion of automatic entitlement to citizenship based on birth in Ireland where the parents are non-nationals,
- (2) some entitlement to citizenship where that is necessary under international law to avoid statelessness,
- (3) some entitlement for long term non-national residents to apply for Irish citizenship for their children,
- (4) to define the concept of long term status itself and the conditions relating to it and the procedures for acquiring this status, and for renewal and removal or loss of status,

(5) a partial curtailment of the existing citizenship provisions at s. 13 of the 1956 Act in relation to persons born on Irish registered vessels or aircraft wherever they may be (though a change of this nature could be brought about even in the current constitutional context).

The Minister's view is that it might be appropriate to outline such legislative changes in the context of a referendum as has been done on other occasions.

#### **The referendum**

31. The Minister is now of the firm view that constitutional change is necessary and he seeks the approval of Government for the preparation of a scheme of a Referendum Bill following consultation with the Office of the Attorney General. The Minister's assessment is that it could take a minimum of 5 months for the preparatory work necessary for the holding of a referendum to be completed. The Minister considers that the referendum should take place at the most realistic opportunity next year and will discuss an appropriate timescale with his colleagues at Government. The issue of all-party discussions on this issue must also be considered in view of the statement in this regard in the Programme for Government.

#### **Financial and staffing implications**

32. There will be costs associated with the holding of the referendum, including the costs of a Referendum Commission. The Minister is aware of the huge annual expenditure, currently over €340m, committed by the State to the processing of asylum claims and the maintenance of asylum seekers in the State. He is especially concerned at the ongoing costs across the State system and in particular, the continuing impact on the health sector arising from the current situation as has been well advertised by recent reports from and public comments by the Masters of the Dublin maternity hospitals as outlined earlier. Any reduction in illegal immigration, including unfounded asylum claims as a result of the proposals in this Memorandum, will result in savings. There will be short, medium and long term savings including to the health services if pregnant non-nationals are discouraged from travelling to Ireland in the later stages of pregnancy.

#### **Impact on Women**

33. The proposals will apply to women and men equally. There have been claims that non-national women have been pressurised by partners to give birth to children in Ireland in view of the potential immigration benefits accruing. The proposed changes should alleviate that situation.

#### **Effects on employment**

34. None.

#### **Effect on relations, co-operation and Common Actions on a North-South and East-West (Irish-British) basis**

35. Persons have been in a position to use the birth of a child in Ireland and the resulting claim to residence in Ireland in order to enter the UK, taking advantage of the limited controls in the Common Travel Area. The proposed changes will eliminate the attraction for those travelling to take advantage of our citizenship law. This will protect the operation of the Common Travel Area.

**Effect on persons in poverty, or at risk of falling into poverty**

36. The effect of these proposals will reduce the attraction for illegal migration and thereby reduce the numbers of non-nationals benefiting from State services including accommodation and health services. This will release resources and improve the availability of services to legal residents in the State.

**Consultation with Government Departments**

37. The Minister outlined the proposals contained in this Memorandum at the meeting of the Cabinet Committee on Asylum Seekers on 12 November 2003.

F489

23 April 2004

MEMORANDUM FOR GOVERNMENT

Referendum on 27<sup>th</sup> Amendment of the Constitution  
Statement for Information of Voters

**1. Decision sought**

The Minister for the Environment, Heritage and Local Government seeks the authority of the Government to move in the Dáil and Seanad the attached motion (Appendix) to prescribe a statement for the information of voters at the forthcoming referendum, subject to any amendments of a drafting nature which may be agreed with the Attorney General. (The voting instructions cover a manual vote used by postal voters and the other electronic voting).

**2. Background**

Section 23 of the Referendum Act, 1994 provides that at a referendum a statement in relation to the proposal which is the subject of the referendum may be prescribed for the information of voters by resolution of each House of the Oireachtas. Where such a statement is prescribed:

- it is printed on the polling cards sent to electors;
- a copy is sent to each postal and special voter (polling cards are not sent to such electors);
- copies are displayed in, and in the precincts of, every polling station;
- the statement may be read out by the presiding officer when assisting blind and incapacitated electors and electors with reading difficulties in marking their ballot papers or voting electronically.

Similar statements were prescribed by resolution of each House for recent referendums.

3. **Content of statement**

The statement proposed contains the proposed amendment as set out in the text of the Bill in Irish and English, indicates that copies of the Bill may be inspected or obtained free of charge at post offices and also contains instructions on voting.

The statements follow the format of those prescribed at previous referendums. The Referendum Commission will be issuing a statement containing a general explanation of the subject matter of the referendum proposal.

4. As with previous motions it is proposed that it be taken after the Fifth Stage of the Constitution Amendment Bill in both Houses as it is inextricably linked with the contents of the Bill.



28/04/2005

**Ref: F407/8**

**Oifig an Aire Comhshaoil, Oidhreachta agus Rialtais Áitiúil**  
**Memorandum for the Information of the Government**  
**Referendum Commission Report Twenty-seventh Amendment of the**  
**Constitution Bill 2004 – Irish Citizenship**

### **1. Matter for Information**

The Minister for the Environment, Heritage and Local Government asks the Government to note the report of the Referendum Commission on its work in relation to the referendum on the Twenty-seventh Amendment of the Constitution Bill 2004 held on 11 June 2004.

### **2. Background**

The primary role of a Referendum Commission is to explain the subject matter of the referendum to the electorate, to promote public awareness of the referendum and encourage the electorate to vote.

On 22 April 2004, the Minister established a Referendum Commission to carry out the functions applicable to it under the Referendum Act 1998, as amended. As required under section 14(1) of the Act, the Commission has submitted a report to the Minister (copy attached). The report contains recommendations on voter participation, the establishment of an independent Electoral Commission, and the need for adequate time to promote public awareness of the referendum on the EU Constitution (see 6 below).

### **3. Information Campaign**

A multimedia approach was adopted by the Commission to carrying out its functions. This included publication and distribution of a bilingual information booklet to 2.3 million voters; it was also available on the Commission's website. In addition, the booklet was produced in braille, in audio tape and in a special sign language video, copies of which were distributed through relevant organisations throughout the country.

As on previous occasions, an extensive radio and television campaign was undertaken. With younger voters in mind, the Commission for the first time made use of adwalkers to heighten awareness of the referendum and its subject matter. These were accompanied by people who distributed an information card (postcard format) which explained the implications of a Yes or No vote and which also encouraged people to vote. An internet banner campaign was also undertaken. Half and full page colour information advertisements were run in the national press and these also contained an element which encouraged people to get out and vote.

The Commission had originally planned to reproduce the main elements of the information booklet in the final round of newspaper advertising but amended its strategy to deliver a pared down message to highlight the implications of a Yes or No vote. Confusion on this issue, which had been identified by research, as well as a lack of understanding by many people of the terms used in the information literature (e.g.: "constitution", "legislation",

“Oireachtas” etc.) were among a range of factors which led to the change of strategy.

#### **4. Effectiveness of the Overall Campaign**

The Commission conducted quantitative and qualitative market research to establish and monitor the extent of public knowledge and understanding of the referendum proposal. Overall, the research indicated that there was an increased awareness of the subject matter of the referendum and of the Commission itself as a result of the multimedia public information campaign undertaken. The findings show that:

- while the information booklet was the crucial core document, some voters found that it contained a lot of text and the language used was not very accessible and was overly legalistic,
- public reaction to the television and radio campaign was quite positive,
- the website was a useful tool in the dissemination of more detailed information on the referendum, notwithstanding the fact that not everyone has access to it,
- while adwalkers and information cards can only reach a limited audience, they were important in terms of reaching out to younger voters in large population centres,
- given the Commission's statutory remit to encourage the electorate to vote in referenda, the level of turnout is a measurement of the success or otherwise of the information campaign - on this occasion it was 59.9%, the highest turnout since the 1995 divorce referendum (68.2%) and, having regard to the increase in the size of the electorate since then, it was the highest number of people ever to vote in a referendum in this country. The report acknowledges the fact that other factors, such as the European and local elections being held on the same day, also boosted turnout.

#### **5. Expenditure**

Financial provision and expenditure were as follows:

**Provision€4m**

**Expenditure€3.093m\***

**\*Subject to Final Accounts**

#### **6. Recommendations**

The report contains a number of recommendations (page 15). These are:

- the need for research into the area of increasing voter participation;
- the need for consideration to be given to the desirability of establishing an independent **Electoral Commission** with a broad remit (embracing the Referendum Commission, the Standards in Public Office Commission (part), the Constituency Commission, the Commission on Electronic Voting, and Departmental functions) and having a wide range of electoral powers; and
- the need for adequate time to promote public awareness of proposed constitutional amendments (including in relation to the forthcoming referendum on the EU Constitution).

These recommendations will be considered by the Minister as appropriate. In view of the extent of research, consultation and primary legislation that would be required, establishment of an independent Electoral Commission should be seen as a longer-term objective that would need detailed consideration in light of the issues involved. The time needed to promote public awareness arises for consideration in the context of decisions on the timing of

individual referenda.

### **7. Laying of Report before Houses**

In accordance with section 14(1) of the Referendum Act 1998, the Minister will lay copies of the report before each House of the Oireachtas. The Commission will then issue a press release on the report.

# CRUINNÍÚ RIALTAIS

02/12/2003

Uimh. ....

## **Citizenship of Irish Born Children**

### **An Bhréith:**

**It was agreed, in accordance with the Programme for Government, that there should be consultation with Opposition Party Leaders on the matter.**

J.P

1. Second Secretary Collins.
2. Assistant Secretary Ryan.
3. Assistant Secretary Wally Kirwan.
4. Assistant Secretary Mary Doyle.
5. Assistant Secretary Philip Kelly.
6. Assistant Secretary Eoin O'Leary.
7. Mr. Gary Davis - Please advise Private Secretary to Minister for Justice, Equality and Law Reform

Rita - 09/12/03 - JL

5180/20/10/0

R

## CRUINNÍÚ RIALTAIS

16/09/2003

Uimh. ....

Irish Born Children

### An Bhreith:

M/JELR briefed meeting on current issues.  
He has asked AG to look at constitutional provisions.

1. Secretary General (on return)
2. Second Secretary Collins.
3. Assistant Secretary Wally Kirwan.
4. Assistant Secretary Mary Doyle.
5. Assistant Secretary Philip Kelly.
6. Assistant Secretary Eoin O'Leary.
7. Mr. Neil Carron



5/02/04/01226  
I  
R

## CRUINNÍÚ RIALTAIS

17/02/2004

....., Uimh. ....

**Irish Citizenship**

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### **An Bhreith:**

**It was agreed to proceed in this matter on the basis discussed at the meeting.**

AD

1. Second Secretary Collins.
2. Assistant Secretary Ryan.
3. Assistant Secretary Wally Kirwan.
4. Assistant Secretary Mary Doyle.
5. Assistant Secretary Philip Kelly.
6. Assistant Secretary Eoin O'Leary.
7. Mr. Gary Davis - Please advise Private Secretary to the Minister for Justice, Equality & Law Reform

Elaine - 18/02/04 - JL

# CRUINNÍÚ RIALTAIS

23/03/2004

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Uimh. ....

## Proposed Constitutional Amendment on Citizenship

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### An Bhreith:

Note was taken of a possible timetable in relation to the proposed Constitutional Amendment on Citizenship.

1. Second Secretary Collins.
2. Assistant Secretary Ryan.
3. Assistant Secretary Wally Kirwan.
4. Assistant Secretary Mary Doyle.
5. Assistant Secretary Philip Kelly.
6. Assistant Secretary Eoin O'Leary.
7. Mr. Gary Davis - Please advise PS to the Minister for the Environment, Heritage and Local Government and PS to the Minister for Justice, Equality and Law Reform

E.H.L.G.

Carmel

J.E.L.R.

Conor

P. Brooks 24/3/04.

AN ROINN COMHSHAOL,

OIDHREACHTA AGUS

RIALTAIS ÁITIÚIL

DEPARTMENT OF THE

ENVIRONMENT, HERITAGE

AND LOCAL GOVERNMENT

Secretary to the Government,  
Government Buildings,  
Upper Merrion Street,  
Dublin 2.

TEACH AN CHUSTAIM

BAILE ÁTHA CLIATH I

CUSTOM HOUSE, DUBLIN I

I have been asked by Mr. Martin Cullen, T.D., Minister for the Environment, Heritage and Local Government to forward herewith for submission to the Government at its next meeting thirty copies of the Memorandum for Government – Referendum on 27<sup>th</sup> Amendment of the Constitution – Statement for Information of Voters.

Tel No: +353 1 888 2000

LoCall No: 1890 20 20 21

Fax No: +353 1 878 8640



Paul G. Aherne  
Runai Aire



**SECRET**

**S180/20/10/0122E**

**Irish Citizenship of Children of Non-National Parents: Proposal for Constitutional Amendment.**

**\*\*\*\*Please note that this item was postponed from the Supplementary Agenda at the Government meeting on 18 November 2003. This item will be included at tomorrow's Government meeting on the Supplementary Agenda.\*\*\*\***

**Proposed Constitutional Amendment on Citizenship**  
**Provisional timetable**

Step to be taken	Critical success factors	Target date
Settle revised instructions to Parliamentary Counsel	<ul style="list-style-type: none"> <li>Advice required from AG on compatibility of proposal with British-Irish Agreement, relationship between BIA and Multi-Party Agreement (text of Art. 2) and equality of treatment north/south for citizenship purposes<sup>1</sup>.</li> <li>Input required from DFA on east/west dimension.<sup>2</sup></li> </ul>	26 March
Obtain Government approval to publish Amendment of the Constitution (AOC) Bill and draft implementing Bill <sup>3</sup>	<ul style="list-style-type: none"> <li>Both draft Bills required from Parliamentary Counsel</li> <li>Government does not meet during Easter week: next meeting after 6 April is Wed. 21 April</li> </ul>	6 April
Publish text of AOC Bill and explanatory document with text of implementing Bill		8 April
Establish Referendum Commission	<ul style="list-style-type: none"> <li>Min for Environment cannot make establishing order until Bill initiated</li> </ul>	8 April
All stages in Dáil	<ul style="list-style-type: none"> <li>Dáil rises for Easter recess on 8 April until 27 April</li> <li>Second Stage 27 April</li> <li>Committee Stage 28 April</li> <li>Report and final stages 29 April</li> </ul>	29 April
All stages in Seanad	<ul style="list-style-type: none"> <li>Second Stage 4 May</li> <li>Committee Stage 5 May</li> <li>Report and final stages 6 May</li> </ul>	6 May
Question put to people	<ul style="list-style-type: none"> <li>Bill must be passed by Oireachtas a minimum of 30 days before it is put to the people.</li> </ul>	11 June

<sup>1</sup> Preliminary indications from AGO are that the implementing Bill must enable persons born in Northern Ireland and described in Annex 2 to the British-Irish Agreement as forming the people of Northern Ireland to have an entitlement to Irish citizenship, and that there should be equality of treatment for Irish citizenship purposes of persons born either side of the Border to non-nationals. The content of the proposed implementing Bill may well influence the terms of the proposal to amend the Constitution.

<sup>2</sup> DFA have indicated orally that there is a need to consult with the UK authorities on this matter.

<sup>3</sup> Implementing Bill not formally the subject of debate.

Minister

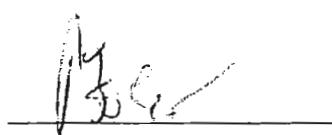
**Re: Memorandum to Government on IBC issue**

As you are aware, the attached Memorandum is being taken at Government on Tuesday next, 18 November. It is being circulated, marked **SECRET** to Ministers by the Cabinet Secretariat on Monday morning.

The only change from the Memorandum you already approved and outlined at Cabinet Committee last Wednesday, is the incorporation of the position in relation to the ECJ Chen case (new paragraphs numbers 19 and 20).

In the file pocket for information is the Memorandum to Government of 28 August 2002 in which you outlined the potential implications for this State and secured Government approval, to our participation in the Hearing.

Following on from the discussions at the Cabinet Committee you may wish to copperfasten at Government the timing issues in relation to the proposed Referendum.

  
Pat Folan

14 November, 2003

copies also sent to  
Trin Dalton & Siobhán MacSweeney.

**Oifig an Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí**

**Ref No. 67/115/2001**

**17 November 2003**

**Memorandum for the Government**

**Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents**

**Decision sought**

1. The Minister for Justice, Equality and Law Reform asks the Government to
  - (a) note the developments in relation to the processing claims for leave to remain in the State from the non-national parents of Irish born children following the Government's Decision (S180/20/10/0122D) of 17 June 2003 on his Memorandum for the Government on a strategy for the handling of such claims after the Supreme Court judgements in L&O on 23 January 2003;
  - (b) approve the preparation of a scheme of a Referendum Bill to provide for appropriate amendment to the Constitution to circumscribe the right to Irish citizenship based solely on birth on the island of Ireland; and
  - (c) approve the preparation of a scheme of an Immigration and Citizenship Bill to amend existing citizenship legislation on foot of the proposed amendment to the Constitution and to make necessary changes to immigration legislation related thereto.

**Background**

2. The Programme for Government contains the following statement:

“We will keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish-born child and initiate all-party discussions on the issue of such constitutional or other measures which might be required.”
3. The Minister has been keeping this issue under review, in particular in relation to the outcome of the Supreme Court judgement of 23 January 2003 in the cases of L&O which clarified the position of the non-national parents of Irish born children. In his Memorandum for the Government of 5 June 2003 the Minister brought to Government his proposed strategy for the handling of claims for leave to remain in the State on the basis of an Irish born child in the light of the Supreme Court judgement. This followed detailed consideration of the issues in the Minister's Department, discussions with the Attorney General on the legal issues and discussions with the Department of Finance on the resources issues arising.
4. The Government Decision approving the strategy confirmed that there would no longer be a separate process for considering claims from non-national parents for leave to remain in the State on the basis of the birth of a child in Ireland. The Government decided that such claims would not be considered where they came from parents (including asylum seekers) who had an alternative legal basis for remaining in the State. Claims from persons who did not have a legal basis for remaining in the State would only be considered in the context of representations on a Ministerial proposal to deport them. On 18 July 2003 a notice was published setting out the details of this policy as regards those persons whose claims had not been processed to finality.

**Action on foot of Government strategy**

5. Following the announcement of the Government's policy and the publication of the notice on 18 July 2003, the Department began an initial processing of claims. This centred on dealing with the most recent applications. Between 18 July and the end of October 918 letters were sent to persons with an alternative legal basis for remaining in the State informing them that there was no longer an "Irish born child" status and that their claims would not be considered. Some 347 letters were sent to persons informing them that the Minister was considering deporting them. In 171 cases the persons concerned made representations to the Minister. To date there has been 1 deportation and others are expected shortly on foot of deportation orders made.

6. During August 2003 the Department of Justice, Equality and Law Reform and the Department of Finance discussed the provision of the additional staffing required for the implementation of the Government's strategy. It was agreed that 150 additional staff would be provided for a period of one year. The Department of Finance decided that this would be implemented by way of a levy on other Government Departments and has written to the Departments concerned seeking staff. The Department of Justice, Equality and Law Reform has been in discussions with the Office of Public Works about the provision of accommodation for these new staff. It is intended to use accommodation in Lower Grand Canal Street which is due to become available during November following minimal refurbishment. It is expected that around 50 staff will begin work during November with the remaining staff joining over the coming months. The Department of Justice, Equality and Law Reform is making preparations for the training of the new staff on arrival.

7. The Department has also agreed a new voluntary return programme with the International Organisation for Migration (IOM) which aims to assist families where non-national parents have claims for leave to remain in the State on the basis of their parentage of an Irish born child. It will operate for a period of 6 months commencing on 1 November and there is an incentive in the form of assistance for reintegration of the families into the parents' countries of origin. This will not be a cash payment, but rather training and other assistance. The programme aims to assist up to 250 families, or up to 750 individuals, to return to the parents' countries of origin.

**Asylum Reapplications**

8. As most of the applicants for leave to remain on the basis of an Irish born child are persons who have withdrawn from the asylum system, there was an expectation that a significant number of these would seek to reapply for asylum so as to prolong their stay in the State. Between 18 July and the end of October, 192 persons had reapplied for asylum having previously withdrawn because of the birth of a child in Ireland. Of these 63 were persons who had been the subject of a letter informing them that the Minister was considering deporting them. The monthly breakdown is as follows :

<b>July (18/7 to 31/7 incl)</b>	<b>August</b>	<b>September</b>	<b>October</b>
56	96	28	12

9. It is likely that, as the new staff commence processing cases, the number of reapplications will increase. Applications for leave to remain from persons with current asylum claims will not be dealt with until the asylum claim has been determined. Where

refugee status is not granted, the issue of the Irish born child will be a factor in considering whether the person should be deported or granted leave to remain based on humanitarian factors.

**What effect has the strategy had in reducing the attraction for illegal migration?**

10. It is now over nine months since the Supreme Court Judgement in L&O. The Minister ceased accepting new applications for leave to remain from the parents of Irish born children over eight months ago. The strategy for the handling of the outstanding cases has been operating since the announcement of the Government decision in July. There has been a reduction in asylum applications in the period since January 2003 as set out below (figures including reapplications) :

Jan	Feb	March	April	May	June	July	August	Sept	Oct
979	947	892	667	604	661	646	655	612	496

11. While the outcome of the Supreme Court judgement and the implementation of the Government strategy published in July have been a significant factor in this reduction, there were several other key developments this year which also impacted on the overall reduction in asylum applicants (with a consequent carry through to the Irish born child issue). These included :

- the elimination of rent supplement for asylum seekers,
- the introduction of sanctions for the employment of illegal immigrants in the Employment Permits Act 2003 in April 2003,
- the introduction of carriers liability in September 2003,
- changes in asylum legislation such as the introduction of the "safe country of origin" concept in September 2003, and
- ongoing operational strategies in relation to illegal immigration.

The reduction in asylum numbers attributable solely to the developments on the Irish born child issue is therefore impossible to determine.

12. As regards the number of asylum applicants who arrive in the State while pregnant, the data available from the Office of the Refugee Applications Commissioner show that over the past year, the number of asylum seekers pregnant at the time of application was almost 60% of the number of female asylum seekers aged 16 years and over. Details are set out in appendix 1. The figures in appendix 1 in relation to new applications only (excluding reapplications from persons who had withdrawn from the asylum system and subsequently reapplied) are available for only 4 months (July to October 2003). While the total number of asylum seekers has dropped, the proportion of women who are pregnant remains very high. The rate of pregnancy is largely unchanged, averaging 58% of women aged over 16 years for the 4-month period. This compares with averages of 58% in the period March-December 2002 and 61% in January-June 2003. It is clear from these figures that there has been no significant change in the situation since the Supreme Court judgement and the implementation of the Government strategy on foot of it.

13. However, recent trends have indicated that the scale of the problem is even greater outside of the asylum seeker framework, with very large numbers of non-EEA nationals now coming to Ireland to give birth. The Minister has been informed of the growing concern

among health care professionals about the rate of non-nationals coming to Ireland to give birth and the strains which this is placing on services. Data supplied by the Masters of the three Dublin Maternity Hospitals show that those hospitals alone have had 2,816 births to non-nationals in the first six months of this year. The percentage of such births is between 20% and 25% of the total number of births in public hospitals in the Dublin area. The Minister has been informed that this trend has not substantially abated since the Supreme Court decision in the L&O cases. The Dublin maternity hospitals project in the region of 5,600 births in this category for the year in those three hospitals alone. When births in other hospitals, in particular, Drogheda, are taken into account, the national figures are likely to be even higher. The Dublin maternity hospitals estimate that two thirds of the births to non-nationals this year will be to persons other than asylum seekers, many of whom follow the pattern of a very late arrival in the State to give birth. Details supplied to the Minister in this regard are included in Appendix 3.

14. The Minister shares the concerns expressed by the Masters of the Dublin hospitals in regards to the trends outlined. He is also seriously concerned that the situation which has now developed has the potential to continue to grow in scale. There are broader, and indeed profound, implications for health and social policy in the figures mentioned above—both in terms of short-term pressure on maternity services and medical services generally and in medium- and long-term patterns of social provision and expenditure. There are also very obvious implications for the future of Irish immigration policy and for the maintenance of the integrity of Irish law on immigration and residence.

15. The Supreme Court judgement in the cases of L&O brought a valuable clarification of the position as regards the entitlements of non-national parents of an Irish born child to remain in the State. The actions undertaken on foot of it have had some effect in lessening the attraction of illegal migration to Ireland. However, expectations that the number of non-national births in Ireland would drop significantly after L&O have not been fulfilled. Two out of three non-nationals births are to persons other than asylum seekers. The prospect of Irish citizenship (and thus EU citizenship) for children born here seems to have an attraction independent of possible parental residence.

#### **The situation internationally**

16. The feature of Irish citizenship law which grants an entitlement to citizenship to all persons born on the island of Ireland is unique in the European Union, and unusual world-wide. Most other countries have laws whereby citizenship is acquired by descent from an existing citizen, with place of birth either wholly or largely irrelevant. This makes Ireland an attractive target destination for persons wishing to establish residence in the EU and with no other basis, or a less certain basis, for doing so elsewhere. All other Member States of the EU either provide citizenship to the child of a citizen or permanent resident only or else provide citizenship to a child born on its territory only after a period of residence in the state concerned and / or after attaining a certain age.

17. The most recent survey of the situation in a range of other states is contained in the recent IOM Report of an International Comparative Study of Migration Legislation and Practice, which was commissioned by this Department as part of the development of comprehensive new immigration legislation and was published in August 2002. The relevant extract from the IOM report is attached in appendix 2. It should also be noted that a number of other states have amended their law to exclude the possibility of the children of illegal

immigrants obtaining citizenship by birth on the territory of the state (UK 1981, Australia 1986). It is clear from the report that within the European Union, Ireland is the only State where citizenship can be achieved primarily through birth within the State.

18. The Justice and Home Affairs Council following the events of 11 September 2001 in the US called on the Member States to strengthen border controls and to exercise vigilance in the issuing of residence permits. There are serious concerns that Ireland's unique situation among EU Member States in regard to citizenship could have serious implications for the integrity of our own immigration controls and for national and international security and could make Ireland a target destination for those wishing, for whatever reason, to secure residence within the EU.

19. The Minister notes the recent case (Man Chen and Catherine Zhu versus the Home Secretary - case 200/02) which was heard before the European Court of Justice (ECJ) on 11 November 2003 and the outcome of which, when known, may have serious implications. The case concerns a pregnant Chinese national resident in the UK who was advised to travel to Belfast to give birth to an Irish citizen child. Under UK citizenship law the child was not entitled to British citizenship. The woman subsequently claimed she had a right under the European Treaties, which are intended to cover free movement rights for EU nationals and their dependents, to remain in the UK as a dependant of the EU citizen child. The EU citizen child was purported to be accessing services, which in the normal course provides a vehicle for free movement for adult EU nationals, and her mother was purported to be her dependent. The UK rejected this claim and the case was referred to the ECJ. The Government approved Ireland's intervention in this case in August 2002. Ireland was represented at the hearing and supported the UK stance - though the reasoning was different.

20. The Attorney General has serious concerns, which are shared by the Minister, that the decision in this case could be favourable to the Chen side. Depending on the nature of the decision it may be that the implications of the Irish citizen child situation may be more profound for our European partners than might have been the case up to now. It may be that a non-EU national will effectively have a right to reside in any EU Member State on the strength of parentage of an Irish citizen child. It may also serve to give the European Court of Justice future competence in a situation which is regarded as outside their jurisdiction at present - that is cases such as the recent Supreme Court case on L&O which was purely internal to Ireland. As a result the ECJ could be in a position to effectively reverse the L&O decision in a future case. This would increase the attractiveness to non-EU nationals of travelling to Ireland to give birth as it could result in an immediate entitlement to residence for the non-national parents. It would have serious implications for our relations with other Member States if our citizenship law was seen to be the cause of a weakening of immigration controls in all Member States.

21. The fact remains that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other Member State of the European Union - in terms of the child's entitlement to Irish and European citizenship and the perceived benefits of this for the parents now or in the future. This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State. The Minister is of the view that this attraction must now be eliminated.

**Discussions with the Office of the Attorney General**

22. In 2002 the Minister's Department and the Office of the Attorney General had discussions concerning the issue of leave to remain for the non-national parents of Irish born children and how to address the concerns of the Government in relation to abuses of the immigration and asylum systems. They considered the possibilities for legislative change and also the possibilities for constitutional amendment and a draft options paper prepared by the Minister's Department was discussed. The discussions were put on hold as a result of the Attorney's view that the outcome of the L&O cases before the Supreme Court should be awaited.

23. Following on from the development, commencement and initial implementation of the Government strategy for handling the Irish born child issue in the light of the Supreme Court judgement in January trends in this area were closely monitored for a period with a view to establishing what further action was required. This indicated, as outlined earlier in this Memorandum, that while the scale of the problem within the asylum framework was reducing in line with the reduction been achieved in overall asylum numbers (albeit still averaging near to 180 female pregnant applicants per month, the overall scale of the problem was in fact increasing at a significant and alarming degree. This was evident as outlined earlier in the numbers of non-nationals given birth in Dublin Maternity Hospitals and in hospitals outside Dublin who had not come through the asylum system. From the information and reports supplied by the hospitals it can be anticipated that births to non-EEA nationals will be in the region of 5,600 this year with approximately 1,900 of those relating to asylum seekers. These developments are dealt with in more detail earlier in the Memorandum and have extremely serious implications for the State.

24. Consequently the Minister again evaluated the options available to deal with this situation and sought the views of the Attorney General on two broad strategic options in this regard : to legislate to discourage non-nationals from having children here in the expectation of Irish citizenship (and EU citizenship) for their children; or, alternatively, to promote a constitutional referendum to allow for a significant legislative change.

**The legislative option**

25. This option would attempt to legislate as far as possible in a manner which would exclude from automatic Irish nationality and citizenship any person who was born to parents neither of whom was or was entitled to be an Irish citizen at the time of the persons birth, subject to such exceptions as might be provided for in the statute (including the obligation to avoid statelessness). This would, on the face of it, amount to a legislative attempt to roll back the availability of citizenship to those enjoying the "birthright" to Irish nationality conferred on persons born in Ireland (including its islands and seas) which is expressly acknowledged or conferred by Article 2 of the Constitution as amended.

26. In considering this option the Minister considered the existing meaning and import of the phase "entitlement and birthright" as used in Article 2 and whether "nationality" and "citizenship" were divisible for any purpose relevant to any Irish born child issue, given that all Article 2 confers is a right to nationality or, in particular, to be part of the Irish nation. The Minister also considered whether an "entitlement and birthright" creates an absolute derivative right for the parents of an Irish born child to opt for Irish citizenship in the case of an infant or legal minor bearing in mind, especially, the potentially onerous implications of

(5) a partial curtailment of the existing citizenship provisions at s. 13 of the 1956 Act in relation to persons born on Irish registered vessels or aircraft wherever they may be (though a change of this nature could be brought about even in the current constitutional context).

The Minister's view is that it might be appropriate to outline such legislative changes in the context of a referendum as has been done on other occasions.

### **The referendum**

31. The Minister is now of the firm view that constitutional change is necessary and he seeks the approval of Government for the preparation of a scheme of a Referendum Bill following consultation with the Office of the Attorney General. The Minister's assessment is that it could take a minimum of 5 months for the preparatory work necessary for the holding of a referendum to be completed. The Minister considers that the referendum should take place at the most realistic opportunity next year and will discuss an appropriate timescale with his colleagues at Government. The issue of all-party discussions on this issue must also be considered in view of the statement in this regard in the Programme for Government.

### **Financial and staffing implications**

32. There will be costs associated with the holding of the referendum, including the costs of a Referendum Commission. The Minister is aware of the huge annual expenditure, currently over €340m, committed by the State to the processing of asylum claims and the maintenance of asylum seekers in the State. He is especially concerned at the ongoing costs across the State system and in particular, the continuing impact on the health sector arising from the current situation as has been well advertised by recent reports from and public comments by the Masters of the Dublin maternity hospitals as outlined earlier. Any reduction in illegal immigration, including unfounded asylum claims as a result of the proposals in this Memorandum, will result in savings. There will be short, medium and long term savings including to the health services if pregnant non-nationals are discouraged from travelling to Ireland in the later stages of pregnancy.

### **Impact on Women**

33. The proposals will apply to women and men equally. There have been claims that non-national women have been pressurised by partners to give birth to children in Ireland in view of the potential immigration benefits accruing. The proposed changes should alleviate that situation.

### **Effects on employment**

34. None.

### **Effect on relations, co-operation and Common Actions on a North-South and East-West (Irish-British) basis**

35. Persons have been in a position to use the birth of a child in Ireland and the resulting claim to residence in Ireland in order to enter the UK, taking advantage of the limited controls in the Common Travel Area. The proposed changes will eliminate the attraction for those travelling to take advantage of our citizenship law. This will protect the operation of the Common Travel Area.

**Effect on persons in poverty, or at risk of falling into poverty**

36. The effect of these proposals will reduce the attraction for illegal migration and thereby reduce the numbers of non-nationals benefiting from State services including accommodation and health services. This will release resources and improve the availability of services to legal residents in the State.

**Consultation with Government Departments**

37. The Minister outlined the proposals contained in this Memorandum at the meeting of the Cabinet Committee on Asylum Seekers on 12 November 2003.

**Data in relation to permission to remain in the State  
on the basis of an Irish born child**

**1) Applications for leave to remain on the basis of having an Irish born child from current and former asylum seekers**

***1.1 Applications received by month:***

A table of applications received from current and former asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
<b>2001</b>	416	161	354	316	517	403	500	655	634	547	744	677	5924
<b>2002</b>	936	625	421	577	621	429	419	594	409	559	542	417	6549
<b>2003</b>	721	261	0*	0*	0*	0*	0*	0*	0*	0*			

\* none accepted

At 31 October 2003, there were 8,877 applications on hand from current and former asylum seekers.

***1.2 Comparison of asylum applications with asylum Irish born child applications:***

In the year 2002, 6,549 applications for leave to remain were received - over 545 per month. When compared with the figure for all asylum applications in the same period, 11,634, Irish born child applications from current or former asylum seekers were running at 56% of the level of asylum applications.

The trend in asylum applications in 2003 is downwards with a 25% reduction in applications to the end of October 2003 compared to the same period in 2002. The figure for asylum applications in October 2003, at 496, is less than half the figure of 1,148 for October 2002. Since January of this year, the month of the decision of the Supreme Court in the cases of L & O, there has been a steady decrease in the number of asylum applications received. While it is not possible to say that this decrease is as a direct result of the Supreme Court decision, it is reasonable to assume that it has had some impact.

***1.3 Withdrawals from the asylum system:***

The number of withdrawals from the asylum process on the basis of having a claim for leave to remain as the parent of an Irish born child averaged 332 cases per month during 2001. This rose to an average of 469 cases per month in 2002 with 5,622 persons withdrawing. This represented almost half of the average number of applications per month.

In 2003, the number of withdrawals from the asylum process has dropped sharply, from 491 persons withdrawing in January to only 2 persons in October.

***1.4 Re-entry to the asylum system:***

Since the Supreme Court decision of 23 January 2003 in the case of *L and O*, persons who had previously withdrawn their application for asylum in order to apply for permission to remain as a parent of an Irish born child have sought to re enter the asylum system and figures are set out below.

Jan (23/1 - 31/1)	Feb	Mar	April	May	June	July	Aug	Sept	Oct
2	14	58	32	28	11	66	96	28	12

**2) Applications for leave to remain on the basis of having an Irish born child from persons other than asylum seekers**

***2.1 Applications received by month:***

A table of applications received from persons other than asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
<b>2001</b>	-	-	92	54	76	55	62	85	17	65	70	70	646
<b>2002</b>	165	140	138	150	201	149	162	219	166	217	218	146	2071
<b>2003</b>	324	127	0*	0*	0*	0*	0*	0*	0*	0*			

\* none accepted

The increase in applications over the last year reflects the increasing numbers of non-nationals legally resident in the State. At 31 October 2003, there were 879 such applications on hand.

**3) Miscellaneous information**

***3.1 Pregnant asylum applicants***

Information made available to the Office of the Refugee Applications Commissioner indicates that over the past year the number of asylum seekers pregnant at the time of application was around 58% of the number of female asylum seekers aged 16 years and over. See figures below.

**Figures for Pregnant Female Asylum Seekers**

**All Applications** - new applications and applications from persons who had withdrawn from the asylum system and subsequently reapplied

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2002:</b>						
March	932	476	384	179	38%	47%
April	888	464	384	224	48%	58%
May	795	411	346	203	49%	59%
June	869	423	339	198	47%	58%
July	1133	557	454	249	45%	55%
August	995	523	414	254	49%	61%
September	1199	603	483	243	40%	50%
October	1148	582	466	280	48%	60%
November	984	515	403	261	51%	65%
December	1090	563	457	312	55%	68%
<b>Total - Mar/Dec '02</b>	<b>10033</b>	<b>5117</b>	<b>4130</b>	<b>2403</b>	<b>47%</b>	<b>58%</b>
<b>2003:</b>						
January	979	502	433	282	56%	65%
February	947	481	393	257	53%	65%
March	892	477	390	225	47%	58%
April	667	340	286	180	53%	63%
May	604	299	251	147	49%	59%
June	661	335	275	155	46%	56%

July	647	322	256	135	42%	53%
August	655	331	271	130	39%	48%
September	611	295	234	119	40%	51%
October	496	246	194	103	42%	53%
<b>Total - Jan/Oct '03</b>	<b>7159</b>	<b>3628</b>	<b>2983</b>	<b>1733</b>	<b>48%</b>	<b>58%</b>

### **New Applications only**

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2003:</b>						
July	754	271	213	133	49%	62%
August	550	265	217	128	48%	59%
September	580	277	218	117	42%	54%
October	478	236	186	102	43%	55%
<b>Total - July/Oct '03</b>	<b>2182</b>	<b>1049</b>	<b>834</b>	<b>480</b>	<b>46%</b>	<b>58%</b>

### ***3.2 Births to non-nationals in the State***

Statistics on the nationality of mothers of children born in the State have not been collected in a systematic way in the past. However, maternity hospitals have begun to collect such data. Data collected by the Reception and Integration Agency from the Dublin maternity hospitals recently showed that an average of **1 out of every 5 children now born in Dublin has a non-EU national mother**. It is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth.

### ***3.3 Situation in maternity hospitals***

The situation is a cause of serious concern to the maternity hospitals, in Dublin in particular. The Masters of the Dublin maternity hospitals have repeatedly expressed their concerns at the numbers of non-national mothers giving birth in Dublin. Figures quoted for the period January to June 2003 show that of the total number of births in the Dublin maternity hospitals (11,601) some 2,816 or 24.3% were to non-national mothers. At present their major concern is the rise in births to non-national mothers other than those in the asylum system. Anecdotal evidence suggests that many women are travelling from the UK in the later stages of pregnancy. This creates difficulties for hospital staff, in particular in terms of an unpredictable workload and dealing with persons with no medical history in the State. The situation outlined by the Masters was also the subject of a report undertaken by the Reception and Integration Agency in conjunction with the Northern Area Health Board. This report cited difficulties for the Dublin maternity hospitals in relation to—

- having to deal with unpredictable workloads—many arrive as late bookings;
- dealing with persons with no medical history in the State and who arrive in late stages of pregnancy, including dealing with relatively high levels of HIV and other illnesses;
- dealing with patients with little knowledge of English and where there may also be cultural issues causing practical difficulties.

As well as the additional stress on hospital staff, these cases were also very resource intensive and were a significant additional burden on hospital resources—the National Maternity Hospital alone estimated additional costs of almost €0.5m for 2002.

***3.4 Family reunification***

In addition to persons granted leave to remain in the State as parents of an Irish born child (4,071 in 2002) there is also a growing issue in relation to requests for family reunification by family members of these people. The Department is receiving a growing number of applications from children and spouses abroad seeking to join a parent or spouse who has been granted leave to remain on the basis of parentage of an Irish born child. Following the recent approval by the Government of a strategy to handle claims for leave to remain in the State on the basis of parentage of an Irish born child, the Department does not propose to accept further applications for family reunification.

# Secret

## Appendix 2

### NATIONALITY

	Rights of a child born to non-nationals	Marriage between a citizen and a non-national
<i>Australia</i>	A child acquires Australian citizenship if one of the parents is either an Australia citizen or a permanent resident. A child born to parents illegally in the country has no claim to citizenship and may be removed with the parent/s in accordance with normal removal procedures.	<b>A Spouse Temporary Visa</b> is issued to a spouse of an Australian citizen/resident. Required conditions for acquiring this visa include minimum 12 months spouse relationship and the proof of a genuine relationship.  No preferential provision for the spouses of Australian citizen/residents for acquiring citizenship.
<i>UK</i>	Prior to 1 January 1983, almost every child born in the United Kingdom was a citizen of the United Kingdom and Colonies. Under the British Nationality Act 1981, a child born in the United Kingdom on or after 1 January 1983 will be a British citizen if either the father or the mother is a British citizen or is legally settled in the UK <sup>20</sup> . If neither parent is a British citizen or legally settled in the UK the child will not be a British citizen at birth.	<b>Settlement Visa</b> is available for non-UK national marrying a British citizen or a person with permanent residency in the UK. The visa is valid for one year and candidates are usually interviewed. If the marriage is subsisting at the end of that year, then an application can be made to the Home Office for permanent residency. An application for British citizenship can be made after having been in the UK for three years if married to a British citizen (or five years if married to a non-British citizen).
<i>USA</i>	A child born in the US is entitled to US citizenship. The parents do not get citizenship unless they have some legal basis for obtaining legal permanent resident status/otherwise meet the naturalisation eligibility requirements. The parents can take the child with them when they leave the country or arrange for someone to take care of the child in the US <sup>21</sup>	The spouse is given 90 days entry status and given conditional permanent residence status based on marriage. The condition can be removed when re-interviewed two years later to make sure that the marriage is valid.  The US offers naturalisation to spouses of US citizens three, rather than the more typical five, years after admission as a permanent resident. The US has marriage fraud provisions that help deter marriages made solely for immigration purposes.
<i>New Zealand</i>		<b>Visitor visa</b> can be issued to fiancée/ fiancé of a New Zealand citizen and resident. If foreign nationals are married to a New Zealand citizen or resident, a New Zealand spouse can apply for a permanent visa provided that his/her foreign spouse meets <u>health and character</u> requirements. New Zealand citizens and residents who have sponsored two or more spouses, have applied for spouse sponsoring within the last 5 years, or have a record of domestic violence are not eligible to apply for visa for spouses. After two years residency, the spouse is eligible for NZ citizenship.
<i>France</i>	A child born in France to foreign parents automatically becomes a French national at the age of majority (18). If a child is over 13, he/she can also attain citizenship with the parent's consent. If over 16, a request can be made for nationality. A third generation immigrant born in France is automatically entitled to French nationality.	Resident permit is given to foreigners married for at least one year rather than the usually 3 years to a French national, provided that the marriage is still subsisting, and that the spouse has maintained French nationality. An undocumented foreigner marrying a French national can not acquire French citizenship. <sup>22</sup> Foreign spouse may acquire naturalisation papers after two years. Within a year, the authority has the right to oppose the naturalisation process. France maintains strict measures against marriage of convenience.
<i>Germany</i>	If one parent has been a legal resident in Germany for at least 8 years permanently and has a permanent resident permit, children acquire German citizenship at the parent's request. <sup>23</sup>	Aliens fulfilling the following requirements can be naturalised on request, with the requirement of legal permanent residence for at least eight years. <sup>24</sup>

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<i>Denmark</i>	A child of non-Denmark citizen will not receive nationality at birth. Since 1999, young foreigners aged 18-23 with minimum 10 years of residence in Denmark (5 years within the last 6 years) can request naturalisation.	While seven years consecutive residency is required for a foreigner applying for naturalisation, a foreign spouse married to a Danish citizen can do so after 4-6 years of residence (depending on the length of marriage). Renunciation of previous nationality is required. More relaxed provisions for Nordic, or EU citizens are available.
<i>Sweden</i>	A child born to non-Swedish parents does not acquire nationality at birth. It is accessible by making a declaration when a child is between 21-23 years old. <sup>23</sup>	Five consecutive years of residency for a foreigner, but exception can be made for applicants marrying to Swedish citizen. More relaxed provisions for a Nordic or EU citizen. Previous citizenship will be lost.
<i>Spain</i>	Spain does not grant Spanish citizenship to a child born to non-Spanish citizens. A child can gain citizenship during the age of 18-20 by declaration. Residence requirement is a minimum of 1 year. A third generation foreigner is granted citizenship if one of the parents also is born in Spain.	A spouse of a Spanish national can acquire Spanish nationality after a one-year preferential period.  In order to avoid marriage of convenience, applicants are requested to prove the authenticity of the marriage (no <i>de facto/de juri</i> separation).
<i>Greece</i>	No entitlement to nationality on birth. When a child reaches 18, he/she can apply for naturalisation. The requirement that the applicant must lodge their naturalisation application 5 years prior does not apply to a Greece-born child. Naturalisation is not a right, but based on discretion.	There is a relaxed naturalisation requirement for spouses.
<i>Italy</i>	With continuous residence since birth, a child can apply for Italian citizenship at the age of 21.	Since 1992, spouses married to an Italian no longer receive automatic citizenship, however the spouse is entitled to apply for citizenship after six months residency in Italy, or three years of marriage.

20 Special consideration applies where a child's parents are EEA nationals who are exercising Treaty rights under European Community law.

21 Further, immigration judges have held that having a US citizen child is no bar to deportation. It may be a basis for obtaining a waiver of deportation only if the deportable alien has been in the US for more than 10 years and the deportation would cause extraordinary harm to the US citizen child. The US citizen child does not have the right to sponsor the parent until the child is 21 years of age.

22 When a couple applies to get married and one of them is an undocumented foreigner, the marriage can be postponed and investigated. The undocumented foreigner may be asked to leave France or be deported.

23 These children usually acquire the citizenship of their parents. Between ages 18-23, they have to opt for one or the other citizenship, dual citizenship is accepted only in exceptional circumstances and requires special procedures

24 However, spouses and children under age meeting extra requirements may be naturalised without fulfilling the minimum residence time, such as possession of a resident permit, no conviction of a major crime.

25 Requirements are 5 years of residency before the age of 16, and additional permanent residence between the age of 16-21. By the provision of Nordic Agreement of 1969, the period of residency in other Nordic countries is recognized by any Nordic countries at the acquisition of nationality (valid only the period spent before reaching 16 years old)

**Details of meetings with the Health Services on births to non-nationals  
in the Dublin Maternity Hospitals**

The Reception and Integration Agency of the Department of Justice, Equality and Law Reform attended a meeting of the Joint Hospitals Committee of the three major Dublin maternity hospitals in July 2003 to discuss arrangements for pregnant asylum seekers. In the course of the meeting it was made clear that the major concern of the Masters and management of the three Dublin maternity's is not about asylum seekers but about non-asylum seeking non-nationals availing of maternity services in Dublin.

Total births and births to non-nationals in the three Dublin maternity's in 2003 up to end June 2003\* are as follows:-

<b>Maternity Hospital</b>	<b>Number of Births</b>	<b>Births to non-national mothers</b>	<b>% births to non-nationals</b>
Rotunda*	3,742	1,144	30.6%
Holles Street	4,068	820	20.16%
The Coombe	3,791	852	22.82%
Total Births	11,601	2,816	24.3%

\*Rotunda figures to 22/7/03

<b>Asylum seeking women 18-49 years to end June 2003</b>	<b>Births to non national women to end June 2003</b>	<b>Projected births to non-national women to end 2003</b>
1,858	2,816	5,600

Figures from the Office of the Refugee Applications Commissioner (ORAC) show that 1858 women between the ages of 18 and 49 (child bearing years) made application for asylum up to end June, 2003. On the basis that 80% of women in this group are evidently pregnant on arrival, this gives a figure of 1520 pregnant women arriving in the first six months of the year. During the period, some 660 were deemed suitable for dispersal by the Balseskin clinic. While not all dispersed pregnant women avail of local services (many arrive back at Dublin hospitals unannounced and in or very near labour) - if we assume that 75% did so (i.e. 525) this leaves an estimated 995 who would have delivered in Dublin hospitals for the first 6 months of the year. These figures are not inclusive of the asylum seekers in private rented accommodation in Dublin prior to the start of the year.

The Masters of the hospitals state that that non-asylum seeking non-national women account for approximately two thirds of the non-national births. (This would appear to be borne out by the above figures). In this context they point out that quite a number arrive with their ante-natal notes from the U.K., deliver and return immediately. According to Dr. Declan

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Keane, Master, Holles St., this cohort is now causing the hospitals greater difficulty than the asylum seekers.

The main concerns expressed by both Masters and management of the hospitals is how pregnant women can, with apparent ease, travel to Ireland, - ostensibly for a week's holiday - during which time they have their children and return home. In virtually all cases no payment is made for services delivered. The Masters also point out that they are receiving requests from places as far afield as Moscow for information on arrangements for having a child in a Dublin Maternity Hospital. (These requests are politely turned down). The Masters went on to say that the projected number of non-nationals giving birth in Dublin is sufficient to warrant a fourth major maternity facility in the city.

The hospital managers said that the strains being put on their financial, human and other resources by non-nationals (i.e. due late arrivals, high rates of HIV, Hepatitis and Syphilis) flow directly from immigration control issues which are solely matters for the Dept. of Justice, Equality and Law Reform and its Agencies. The issues arising were explained including the Constitutional issues, the difficulties faced by immigration personnel due to the Ireland/UK Common Travel Area and possible accusations of discrimination if they appear to concentrate of one nationality or ethnic group. However, both hospital management and Masters made it clear that, in their view, something needs to be done to tighten up controls in the immigration area such that the State does not have to continue bear an undue burden in maternity services.

**Reception & Integration Agency**

**5th August, 2003**

**Brief update from Rotunda Hospital and issues concerning travel to Ireland.**

A recent meeting with the Rotunda Hospital gave the following information about births to non-nationals.

The projected births to non-nationals for 2003 at the Rotunda is 2,150. The table below gives a comparison of births from 1st Jan to 21st August for 2002 and 2003.

	<b>2002</b>	<b>% for year</b>	<b>2003</b>	<b>% for year</b>
<b>Irish</b>	3,082	71.8%	2,891	67.7%
<b>Non-national</b>	1,131	26.4%	1,281	30%
<b>Not entered</b>	81	1.8%	100	2.3%
		100%		100%
<b>Total Mothers delivering</b>	4,294		4,272	

Comparing 2003 to 2002, the number of Irish women delivering decreased by 6.2% - the number of non-nationals increased by 13.3%. While the hospital has no coherent way of

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determining nationality and/or status of the non-nationals, a sample exercise is being undertaken to estimate the percentage of asylum seeking and non-asylum seeking non-national mothers giving birth at the hospital.

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**Oifig an Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí****Ref No. 67/115/2001****17 November 2003****Memorandum for the Government****Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents****Decision sought**

1. The Minister for Justice, Equality and Law Reform asks the Government to
  - (a) note the developments in relation to the processing claims for leave to remain in the State from the non-national parents of Irish born children following the Government's Decision (S180/20/10/0122D) of 17 June 2003 on his Memorandum for the Government on a strategy for the handling of such claims after the Supreme Court judgements in L&O on 23 January 2003;
  - (b) approve the preparation of a scheme of a Referendum Bill to provide for appropriate amendment to the Constitution to circumscribe the right to Irish citizenship based solely on birth on the island of Ireland; and
  - (c) approve the preparation of a scheme of an Immigration and Citizenship Bill to amend existing citizenship legislation on foot of the proposed amendment to the Constitution and to make necessary changes to immigration legislation related thereto.

**Background**

2. The Programme for Government contains the following statement:
 

“We will keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish-born child and initiate all-party discussions on the issue of such constitutional or other measures which might be required.”
3. The Minister has been keeping this issue under review, in particular in relation to the outcome of the Supreme Court judgement of 23 January 2003 in the cases of L&O which clarified the position of the non-national parents of Irish born children. In his Memorandum for the Government of 5 June 2003 the Minister brought to Government his proposed strategy for the handling of claims for leave to remain in the State on the basis of an Irish born child in the light of the Supreme Court judgement. This followed detailed consideration of the issues in the Minister's Department, discussions with the Attorney General on the legal issues and discussions with the Department of Finance on the resources issues arising.
4. The Government Decision approving the strategy confirmed that there would no longer be a separate process for considering claims from non-national parents for leave to remain in the State on the basis of the birth of a child in Ireland. The Government decided that such claims would not be considered where they came from parents (including asylum seekers) who had an alternative legal basis for remaining in the State. Claims from persons who did not have a legal basis for remaining in the State would only be considered in the context of representations on a Ministerial proposal to deport them. On 18 July 2003 a notice was published setting out the details of this policy as regards those persons whose claims had not been processed to finality.

**Action on foot of Government strategy**

5. Following the announcement of the Government's policy and the publication of the notice on 18 July 2003, the Department began an initial processing of claims. This centred on dealing with the most recent applications. Between 18 July and the end of October 918 letters were sent to persons with an alternative legal basis for remaining in the State informing them that there was no longer an "Irish born child" status and that their claims would not be considered. Some 347 letters were sent to persons informing them that the Minister was considering deporting them. In 171 cases the persons concerned made representations to the Minister. To date there has been 1 deportation and others are expected shortly on foot of deportation orders made.

6. During August 2003 the Department of Justice, Equality and Law Reform and the Department of Finance discussed the provision of the additional staffing required for the implementation of the Government's strategy. It was agreed that 150 additional staff would be provided for a period of one year. The Department of Finance decided that this would be implemented by way of a levy on other Government Departments and has written to the Departments concerned seeking staff. The Department of Justice, Equality and Law Reform has been in discussions with the Office of Public Works about the provision of accommodation for these new staff. It is intended to use accommodation in Lower Grand Canal Street which is due to become available during November following minimal refurbishment. It is expected that around 50 staff will begin work during November with the remaining staff joining over the coming months. The Department of Justice, Equality and Law Reform is making preparations for the training of the new staff on arrival.

7. The Department has also agreed a new voluntary return programme with the International Organisation for Migration (IOM) which aims to assist families where non-national parents have claims for leave to remain in the State on the basis of their parentage of an Irish born child. It will operate for a period of 6 months commencing on 1 November and there is an incentive in the form of assistance for reintegration of the families into the parents' countries of origin. This will not be a cash payment, but rather training and other assistance. The programme aims to assist up to 250 families, or up to 750 individuals, to return to the parents' countries of origin.

**Asylum Reapplications**

8. As most of the applicants for leave to remain on the basis of an Irish born child are persons who have withdrawn from the asylum system, there was an expectation that a significant number of these would seek to reapply for asylum so as to prolong their stay in the State. Between 18 July and the end of October, 192 persons had reapplied for asylum having previously withdrawn because of the birth of a child in Ireland. Of these 63 were persons who had been the subject of a letter informing them that the Minister was considering deporting them. The monthly breakdown is as follows :

July (18/7 to 31/7 incl)	August	September	October
56	96	28	12

9. It is likely that, as the new staff commence processing cases, the number of reapplications will increase. Applications for leave to remain from persons with current asylum claims will not be dealt with until the asylum claim has been determined. Where

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refugee status is not granted, the issue of the Irish born child will be a factor in considering whether the person should be deported or granted leave to remain based on humanitarian factors.

**What effect has the strategy had in reducing the attraction for illegal migration?**

10. It is now over nine months since the Supreme Court Judgement in L&O. The Minister ceased accepting new applications for leave to remain from the parents of Irish born children over eight months ago. The strategy for the handling of the outstanding cases has been operating since the announcement of the Government decision in July. There has been a reduction in asylum applications in the period since January 2003 as set out below (figures including reapplications) :

Jan	Feb	March	April	May	June	July	August	Sept	Oct
979	947	892	667	604	661	646	655	612	496

11. While the outcome of the Supreme Court judgement and the implementation of the Government strategy published in July have been a significant factor in this reduction, there were several other key developments this year which also impacted on the overall reduction in asylum applicants (with a consequent carry through to the Irish born child issue). These included :

- the elimination of rent supplement for asylum seekers,
- the introduction of sanctions for the employment of illegal immigrants in the Employment Permits Act 2003 in April 2003,
- the introduction of carriers liability in September 2003,
- changes in asylum legislation such as the introduction of the "safe country of origin" concept in September 2003, and
- ongoing operational strategies in relation to illegal immigration.

The reduction in asylum numbers attributable solely to the developments on the Irish born child issue is therefore impossible to determine.

12. As regards the number of asylum applicants who arrive in the State while pregnant, the data available from the Office of the Refugee Applications Commissioner show that over the past year, the number of asylum seekers pregnant at the time of application was almost 60% of the number of female asylum seekers aged 16 years and over. Details are set out in appendix 1. The figures in appendix 1 in relation to new applications only (excluding reapplications from persons who had withdrawn from the asylum system and subsequently reapplied) are available for only 4 months (July to October 2003). While the total number of asylum seekers has dropped, the proportion of women who are pregnant remains very high. The rate of pregnancy is largely unchanged, averaging 58% of women aged over 16 years for the 4-month period. This compares with averages of 58% in the period March-December 2002 and 61% in January-June 2003. It is clear from these figures that there has been no significant change in the situation since the Supreme Court judgement and the implementation of the Government strategy on foot of it.

13. However, recent trends have indicated that the scale of the problem is even greater outside of the asylum seeker framework, with very large numbers of non-EEA nationals now coming to Ireland to give birth. The Minister has been informed of the growing concern

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among health care professionals about the rate of non-nationals coming to Ireland to give birth and the strains which this is placing on services. Data supplied by the Masters of the three Dublin Maternity Hospitals show that those hospitals alone have had 2,816 births to non-nationals in the first six months of this year. The percentage of such births is between 20% and 25% of the total number of births in public hospitals in the Dublin area. The Minister has been informed that this trend has not substantially abated since the Supreme Court decision in the L&O cases. The Dublin maternity hospitals project in the region of 5,600 births in this category for the year in those three hospitals alone. When births in other hospitals, in particular, Drogheda, are taken into account, the national figures are likely to be even higher. The Dublin maternity hospitals estimate that two thirds of the births to non-nationals this year will be to persons other than asylum seekers, many of whom follow the pattern of a very late arrival in the State to give birth. Details supplied to the Minister in this regard are included in Appendix 3.

14. The Minister shares the concerns expressed by the Masters of the Dublin hospitals in regards to the trends outlined. He is also seriously concerned that the situation which has now developed has the potential to continue to grow in scale. There are broader, and indeed profound, implications for health and social policy in the figures mentioned above—both in terms of short-term pressure on maternity services and medical services generally and in medium- and long-term patterns of social provision and expenditure. There are also very obvious implications for the future of Irish immigration policy and for the maintenance of the integrity of Irish law on immigration and residence.

15. The Supreme Court judgement in the cases of L&O brought a valuable clarification of the position as regards the entitlements of non-national parents of an Irish born child to remain in the State. The actions undertaken on foot of it have had some effect in lessening the attraction of illegal migration to Ireland. However, expectations that the number of non-national births in Ireland would drop significantly after L&O have not been fulfilled. Two out of three non-nationals births are to persons other than asylum seekers. The prospect of Irish citizenship (and thus EU citizenship) for children born here seems to have an attraction independent of possible parental residence.

**The situation internationally**

16. The feature of Irish citizenship law which grants an entitlement to citizenship to all persons born on the island of Ireland is unique in the European Union, and unusual world-wide. Most other countries have laws whereby citizenship is acquired by descent from an existing citizen, with place of birth either wholly or largely irrelevant. This makes Ireland an attractive target destination for persons wishing to establish residence in the EU and with no other basis, or a less certain basis, for doing so elsewhere. All other Member States of the EU either provide citizenship to the child of a citizen or permanent resident only or else provide citizenship to a child born on its territory only after a period of residence in the state concerned and / or after attaining a certain age.

17. The most recent survey of the situation in a range of other states is contained in the recent IOM Report of an International Comparative Study of Migration Legislation and Practice, which was commissioned by this Department as part of the development of comprehensive new immigration legislation and was published in August 2002. The relevant extract from the IOM report is attached in appendix 2. It should also be noted that a number of other states have amended their law to exclude the possibility of the children of illegal

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immigrants obtaining citizenship by birth on the territory of the state (UK 1981, Australia 1986). It is clear from the report that within the European Union, Ireland is the only State where citizenship can be achieved primarily through birth within the State.

18. The Justice and Home Affairs Council following the events of 11 September 2001 in the US called on the Member States to strengthen border controls and to exercise vigilance in the issuing of residence permits. There are serious concerns that Ireland's unique situation among EU Member States in regard to citizenship could have serious implications for the integrity of our own immigration controls and for national and international security and could make Ireland a target destination for those wishing, for whatever reason, to secure residence within the EU.

19. The Minister notes the recent case (Man Chen and Catherine Zhu versus the Home Secretary - case 200/02) which was heard before the European Court of Justice (ECJ) on 11 November 2003 and the outcome of which, when known, may have serious implications. The case concerns a pregnant Chinese national resident in the UK who was advised to travel to Belfast to give birth to an Irish citizen child. Under UK citizenship law the child was not entitled to British citizenship. The woman subsequently claimed she had a right under the European Treaties, which are intended to cover free movement rights for EU nationals and their dependents, to remain in the UK as a dependant of the EU citizen child. The EU citizen child was purported to be accessing services, which in the normal course provides a vehicle for free movement for adult EU nationals, and her mother was purported to be her dependent. The UK rejected this claim and the case was referred to the ECJ. The Government approved Ireland's intervention in this case in August 2002. Ireland was represented at the hearing and supported the UK stance - though the reasoning was different.

20. The Attorney General has serious concerns, which are shared by the Minister, that the decision in this case could be favourable to the Chen side. Depending on the nature of the decision it may be that the implications of the Irish citizen child situation may be more profound for our European partners than might have been the case up to now. It may be that a non-EU national will effectively have a right to reside in any EU Member State on the strength of parentage of an Irish citizen child. It may also serve to give the European Court of Justice future competence in a situation which is regarded as outside their jurisdiction at present - that is cases such as the recent Supreme Court case on L&O which was purely internal to Ireland. As a result the ECJ could be in a position to effectively reverse the L&O decision in a future case. This would increase the attractiveness to non-EU nationals of travelling to Ireland to give birth as it could result in an immediate entitlement to residence for the non-national parents. It would have serious implications for our relations with other Member States if our citizenship law was seen to be the cause of a weakening of immigration controls in all Member States.

21. The fact remains that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other Member State of the European Union - in terms of the child's entitlement to Irish and European citizenship and the perceived benefits of this for the parents now or in the future. This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State. The Minister is of the view that this attraction must now be eliminated.

**Discussions with the Office of the Attorney General**

22. In 2002 the Minister's Department and the Office of the Attorney General had discussions concerning the issue of leave to remain for the non-national parents of Irish born children and how to address the concerns of the Government in relation to abuses of the immigration and asylum systems. They considered the possibilities for legislative change and also the possibilities for constitutional amendment and a draft options paper prepared by the Minister's Department was discussed. The discussions were put on hold as a result of the Attorney's view that the outcome of the L&O cases before the Supreme Court should be awaited.

23. Following on from the development, commencement and initial implementation of the Government strategy for handling the Irish born child issue in the light of the Supreme Court judgement in January trends in this area were closely monitored for a period with a view to establishing what further action was required. This indicated, as outlined earlier in this Memorandum, that while the scale of the problem within the asylum framework was reducing in line with the reduction been achieved in overall asylum numbers (albeit still averaging near to 180 female pregnant applicants per month, the overall scale of the problem was in fact increasing at a significant and alarming degree. This was evident as outlined earlier in the numbers of non-nationals given birth in Dublin Maternity Hospitals and in hospitals outside Dublin who had not come through the asylum system. From the information and reports supplied by the hospitals it can be anticipated that births to non-EEA nationals will be in the region of 5,600 this year with approximately 1,900 of those relating to asylum seekers. These developments are dealt with in more detail earlier in the Memorandum and have extremely serious implications for the State.

24. Consequently the Minister again evaluated the options available to deal with this situation and sought the views of the Attorney General on two broad strategic options in this regard : to legislate to discourage non-nationals from having children here in the expectation of Irish citizenship (and EU citizenship) for their children; or, alternatively, to promote a constitutional referendum to allow for a significant legislative change.

**The legislative option**

25. This option would attempt to legislate as far as possible in a manner which would exclude from automatic Irish nationality and citizenship any person who was born to parents neither of whom was or was entitled to be an Irish citizen at the time of the persons birth, subject to such exceptions as might be provided for in the statute (including the obligation to avoid statelessness). This would, on the face of it, amount to a legislative attempt to roll back the availability of citizenship to those enjoying the "birthright" to Irish nationality conferred on persons born in Ireland (including its islands and seas) which is expressly acknowledged or conferred by Article 2 of the Constitution as amended.

26. In considering this option the Minister considered the existing meaning and import of the phase "entitlement and birthright" as used in Article 2 and whether "nationality" and "citizenship" were divisible for any purpose relevant to any Irish born child issue, given that all Article 2 confers is a right to nationality or, in particular, to be part of the Irish nation. The Minister also considered whether an "entitlement and birthright" creates an absolute derivative right for the parents of an Irish born child to opt for Irish citizenship in the case of an infant or legal minor bearing in mind, especially, the potentially onerous implications of

Article 9.2 (as regards “fidelity to the nation and loyalty to the State”) for such a citizen in later years. He also considered whether it would be permissible under the Constitution in its present form to distinguish between the entitlement of a citizen and a non-citizen to assert a claim to citizenship on behalf of his/her Irish born child.

27. The Attorney General’s advice was clear that the phrases “entitlement” and “birthright” are sufficiently clear to warrant an assumption that any person born in the island of Ireland is in fact entitled to Irish citizenship and that nationality and citizenship in the present context are indistinguishable. He is also of the view that it is not possible to put the Irish born child’s right to citizenship into effective suspension until it reaches its majority or a predetermined age. For these reasons the advice of the Attorney General is that the legislative route is not viable and this is a view which the Minister shares.

**The Constitutional amendment option**

28. In view of the advice of the Attorney General and the ongoing scale of the problem it is now clear that an amendment to Constitution will be necessary. The Minister has considered a range of possibilities for such change. He is mindful of the desirability that such change should not involve a direct amendment to Article 2 while at the same time dealing with the impact of that article. It is the Minister’s view that it would be possible to provide a firm constitutional basis for such legislation by amending Article 9 of the Constitution to insert an Article 9.1.3 to the following effect:

*3. In the case of a person born in the island of Ireland to parents neither of whom was an Irish citizen nor entitled under law to be an Irish citizen at the time of the person's birth, any entitlement to Irish nationality and citizenship shall be determined in accordance with law.*

29. The wording of Article 2 of the Constitution emerged as a result of complex and difficult negotiations. It is reasonable to assume that the residence entitlements of non-national parents of Irish children were not uppermost in the minds of the negotiators. Nor, presumably, were they a major consideration for the people North and South who accepted the terms of the Good Friday Agreement by referendum (although the question had been discussed in the material published by the Referendum Commission in the South). The Minister’s proposal would not involve a direct amendment to Article 2 but would deal with its impact.

**Legislation to accompany constitutional change**

30. The Minister’s view is that any legislation to accompany constitutional change should be carefully drafted to achieve the following aims :

- (1) a clear exclusion of automatic entitlement to citizenship based on birth in Ireland where the parents are non-nationals,
- (2) some entitlement to citizenship where that is necessary under international law to avoid statelessness,
- (3) some entitlement for long term non-national residents to apply for Irish citizenship for their children,
- (4) to define the concept of long term status itself and the conditions relating to it and the procedures for acquiring this status, and for renewal and removal or loss of status,

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(5) a partial curtailment of the existing citizenship provisions at s. 13 of the 1956 Act in relation to persons born on Irish registered vessels or aircraft wherever they may be (though a change of this nature could be brought about even in the current constitutional context).

The Minister's view is that it might be appropriate to outline such legislative changes in the context of a referendum as has been done on other occasions.

### **The referendum**

31. The Minister is now of the firm view that constitutional change is necessary and he seeks the approval of Government for the preparation of a scheme of a Referendum Bill following consultation with the Office of the Attorney General. The Minister's assessment is that it could take a minimum of 5 months for the preparatory work necessary for the holding of a referendum to be completed. The Minister considers that the referendum should take place at the most realistic opportunity next year and will discuss an appropriate timescale with his colleagues at Government. The issue of all-party discussions on this issue must also be considered in view of the statement in this regard in the Programme for Government.

### **Financial and staffing implications**

32. There will be costs associated with the holding of the referendum, including the costs of a Referendum Commission. The Minister is aware of the huge annual expenditure, currently over €340m, committed by the State to the processing of asylum claims and the maintenance of asylum seekers in the State. He is especially concerned at the ongoing costs across the State system and in particular, the continuing impact on the health sector arising from the current situation as has been well advertised by recent reports from and public comments by the Masters of the Dublin maternity hospitals as outlined earlier. Any reduction in illegal immigration, including unfounded asylum claims as a result of the proposals in this Memorandum, will result in savings. There will be short, medium and long term savings including to the health services if pregnant non-nationals are discouraged from travelling to Ireland in the later stages of pregnancy.

### **Impact on Women**

33. The proposals will apply to women and men equally. There have been claims that non-national women have been pressurised by partners to give birth to children in Ireland in view of the potential immigration benefits accruing. The proposed changes should alleviate that situation.

### **Effects on employment**

34. None.

### **Effect on relations, co-operation and Common Actions on a North-South and East-West (Irish-British) basis**

35. Persons have been in a position to use the birth of a child in Ireland and the resulting claim to residence in Ireland in order to enter the UK, taking advantage of the limited controls in the Common Travel Area. The proposed changes will eliminate the attraction for those travelling to take advantage of our citizenship law. This will protect the operation of the Common Travel Area.

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**Effect on persons in poverty, or at risk of falling into poverty**

36. The effect of these proposals will reduce the attraction for illegal migration and thereby reduce the numbers of non-nationals benefiting from State services including accommodation and health services. This will release resources and improve the availability of services to legal residents in the State.

**Consultation with Government Departments**

37. The Minister outlined the proposals contained in this Memorandum at the meeting of the Cabinet Committee on Asylum Seekers on 12 November 2003.

**Data in relation to permission to remain in the State  
on the basis of an Irish born child**

**1) Applications for leave to remain on the basis of having an Irish born child from current and former asylum seekers**

***1.1 Applications received by month:***

A table of applications received from current and former asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2001	416	161	354	316	517	403	500	655	634	547	744	677	5924
2002	936	625	421	577	621	429	419	594	409	559	542	417	6549
2003	721	261	0*	0*	0*	0*	0*	0*	0*	0*	0*		

\* none accepted

At 31 October 2003, there were 8,877 applications on hand from current and former asylum seekers.

***1.2 Comparison of asylum applications with asylum Irish born child applications:***

In the year 2002, 6,549 applications for leave to remain were received - over 545 per month. When compared with the figure for all asylum applications in the same period, 11,634, Irish born child applications from current or former asylum seekers were running at 56% of the level of asylum applications.

The trend in asylum applications in 2003 is downwards with a 25% reduction in applications to the end of October 2003 compared to the same period in 2002. The figure for asylum applications in October 2003, at 496, is less than half the figure of 1,148 for October 2002. Since January of this year, the month of the decision of the Supreme Court in the cases of L & O, there has been a steady decrease in the number of asylum applications received. While it is not possible to say that this decrease is as a direct result of the Supreme Court decision, it is reasonable to assume that it has had some impact.

***1.3 Withdrawals from the asylum system:***

The number of withdrawals from the asylum process on the basis of having a claim for leave to remain as the parent of an Irish born child averaged 332 cases per month during 2001. This rose to an average of 469 cases per month in 2002 with 5,622 persons withdrawing. This represented almost half of the average number of applications per month.

In 2003, the number of withdrawals from the asylum process has dropped sharply, from 491 persons withdrawing in January to only 2 persons in October.

***1.4 Re-entry to the asylum system:***

Since the Supreme Court decision of 23 January 2003 in the case of *L and O*, persons who had previously withdrawn their application for asylum in order to apply for permission to remain as a parent of an Irish born child have sought to re enter the asylum system and figures are set out below.

Jan (23/1 - 31/1)	Feb	Mar	April	May	June	July	Aug	Sept	Oct
2	14	58	32	28	11	66	96	28	12

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**2) Applications for leave to remain on the basis of having an Irish born child from persons other than asylum seekers**

***2.1 Applications received by month:***

A table of applications received from persons other than asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
<b>2001</b>	-	-	92	54	76	55	62	85	17	65	70	70	646
<b>2002</b>	165	140	138	150	201	149	162	219	166	217	218	146	2071
<b>2003</b>	324	127	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	

\* none accepted

The increase in applications over the last year reflects the increasing numbers of non-nationals legally resident in the State. At 31 October 2003, there were 879 such applications on hand.

**3) Miscellaneous information**

***3.1 Pregnant asylum applicants***

Information made available to the Office of the Refugee Applications Commissioner indicates that over the past year the number of asylum seekers pregnant at the time of application was around 58% of the number of female asylum seekers aged 16 years and over. See figures below.

**Figures for Pregnant Female Asylum Seekers**

**All Applications** - new applications and applications from persons who had withdrawn from the asylum system and subsequently reapplied

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2002:</b>						
March	932	476	384	179	38%	47%
April	888	464	384	224	48%	58%
May	795	411	346	203	49%	59%
June	869	423	339	198	47%	58%
July	1133	557	454	249	45%	55%
August	995	523	414	254	49%	61%
September	1199	603	483	243	40%	50%
October	1148	582	466	280	48%	60%
November	984	515	403	261	51%	65%
December	1090	563	457	312	55%	68%
<b>Total - Mar/Dec '02</b>	<b>10033</b>	<b>5117</b>	<b>4130</b>	<b>2403</b>	<b>47%</b>	<b>58%</b>
<b>2003:</b>						
January	979	502	433	282	56%	65%
February	947	481	393	257	53%	65%
March	892	477	390	225	47%	58%
April	667	340	286	180	53%	63%
May	604	299	251	147	49%	59%
June	661	335	275	155	46%	56%

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July	647	322	256	135	42%	53%
August	655	331	271	130	39%	48%
September	611	295	234	119	40%	51%
October	496	246	194	103	42%	53%
<b>Total - Jan/Oct '03</b>	<b>7159</b>	<b>3628</b>	<b>2983</b>	<b>1733</b>	<b>48%</b>	<b>58%</b>

### New Applications only

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2003:</b>						
July	754	271	213	133	49%	62%
August	550	265	217	128	48%	59%
September	580	277	218	117	42%	54%
October	478	236	186	102	43%	55%
<b>Total - July/Oct '03</b>	<b>2182</b>	<b>1049</b>	<b>834</b>	<b>480</b>	<b>46%</b>	<b>58%</b>

### ***3.2 Births to non-nationals in the State***

Statistics on the nationality of mothers of children born in the State have not been collected in a systematic way in the past. However, maternity hospitals have begun to collect such data. Data collected by the Reception and Integration Agency from the Dublin maternity hospitals recently showed that an average of **1 out of every 5 children now born in Dublin has a non-EU national mother**. It is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth.

### ***3.3 Situation in maternity hospitals***

The situation is a cause of serious concern to the maternity hospitals, in Dublin in particular. The Masters of the Dublin maternity hospitals have repeatedly expressed their concerns at the numbers of non-national mothers giving birth in Dublin. Figures quoted for the period January to June 2003 show that of the total number of births in the Dublin maternity hospitals (11,601) some 2,816 or 24.3% were to non-national mothers. At present their major concern is the rise in births to non-national mothers other than those in the asylum system. Anecdotal evidence suggests that many women are travelling from the UK in the later stages of pregnancy. This creates difficulties for hospital staff, in particular in terms of an unpredictable workload and dealing with persons with no medical history in the State. The situation outlined by the Masters was also the subject of a report undertaken by the Reception and Integration Agency in conjunction with the Northern Area Health Board. This report cited difficulties for the Dublin maternity hospitals in relation to—

- having to deal with unpredictable workloads—many arrive as late bookings;
- dealing with persons with no medical history in the State and who arrive in late stages of pregnancy, including dealing with relatively high levels of HIV and other illnesses;
- dealing with patients with little knowledge of English and where there may also be cultural issues causing practical difficulties.

As well as the additional stress on hospital staff, these cases were also very resource intensive and were a significant additional burden on hospital resources—the National Maternity Hospital alone estimated additional costs of almost €0.5m for 2002.

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***3.4 Family reunification***

In addition to persons granted leave to remain in the State as parents of an Irish born child (4,071 in 2002) there is also a growing issue in relation to requests for family reunification by family members of these people. The Department is receiving a growing number of applications from children and spouses abroad seeking to join a parent or spouse who has been granted leave to remain on the basis of parentage of an Irish born child. Following the recent approval by the Government of a strategy to handle claims for leave to remain in the State on the basis of parentage of an Irish born child, the Department does not propose to accept further applications for family reunification.

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**Appendix 2**

**NATIONALITY**

	<b>Rights of a child born to non-nationals</b>	<b>Marriage between a citizen and a non-national</b>
<i>Australia</i>	A child acquires Australian citizenship if one of the parents is either an Australia citizen or a permanent resident. A child born to parents illegally in the country has no claim to citizenship and may be removed with the parent/s in accordance with normal removal procedures.	A <b>Spouse Temporary Visa</b> is issued to a spouse of an Australian citizen/resident. Required conditions for acquiring this visa include minimum 12 months spouse relationship and the proof of a genuine relationship.  No preferential provision for the spouses of Australian citizen/residents for acquiring citizenship.
<i>UK</i>	Prior to 1 January 1983, almost every child born in the United Kingdom was a citizen of the United Kingdom and Colonies. Under the British Nationality Act 1981, a child born in the United Kingdom on or after 1 January 1983 will be a British citizen if either the father or the mother is a British citizen or is legally settled in the UK <sup>20</sup> . If neither parent is a British citizen or legally settled in the UK the child will not be a British citizen at birth.	A <b>Settlement Visa</b> is available for non-UK national marrying a British citizen or a person with permanent residency in the UK. The visa is valid for one year and candidates are usually interviewed. If the marriage is subsisting at the end of that year, then an application can be made to the Home Office for permanent residency. An application for British citizenship can be made after having been in the UK for three years if married to a British citizen (or five years if married to a non-British citizen).
<i>USA</i>	A child born in the US is entitled to US citizenship. The parents do not get citizenship unless they have some legal basis for obtaining legal permanent resident status/otherwise meet the naturalisation eligibility requirements. The parents can take the child with them when they leave the country or arrange for someone to take care of the child in the US <sup>21</sup>	The spouse is given 90 days entry status and given conditional permanent residence status based on marriage. The condition can be removed when re-interviewed two years later to make sure that the marriage is valid.  The US offers naturalisation to spouses of US citizens three, rather than the more typical five, years after admission as a permanent resident. The US has marriage fraud provisions that help deter marriages made solely for immigration purposes.
<i>New Zealand</i>		Visitor visa can be issued to fiancée/ fiancé of a New Zealand citizen and resident. If foreign nationals are married to a New Zealand citizen or resident, a New Zealand spouse can apply for a permanent visa provided that his/her foreign spouse meets <u>health and character</u> requirements. New Zealand citizens and residents who have sponsored two or more spouses, have applied for spouse sponsoring within the last 5 years, or have a record of domestic violence are not eligible to apply for visa for spouses. After two years residency, the spouse is eligible for NZ citizenship.
<i>France</i>	A child born in France to foreign parents automatically becomes a French national at the age of majority (18). If a child is over 13, he/she can also attain citizenship with the parent's consent. If over 16, a request can be made for nationality. A third generation immigrant born in France is automatically entitled to French nationality.	Resident permit is given to foreigners married for at least one year rather than the usually 3 years to a French national, provided that the marriage is still subsisting, and that the spouse has maintained French nationality. An undocumented foreigner marrying a French national can not acquire French citizenship. <sup>22</sup> Foreign spouse may acquire naturalisation papers after two years. Within a year, the authority has the right to oppose the naturalisation process. France maintains strict measures against marriage of convenience.
<i>Germany</i>	If one parent has been a legal resident in Germany for at least 8 years permanently and has a permanent resident permit, children acquire German citizenship at the parent's request. <sup>23</sup>	Aliens fulfilling the following requirements can be naturalised on request with the requirement of legal permanent residence for at least eight years. <sup>24</sup>

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<i>Denmark</i>	A child of non-Denmark citizen will not receive nationality at birth. Since 1999, young foreigners aged 18-23 with minimum 10 years of residence in Denmark (5 years within the last 6 years) can request naturalisation.	While seven years consecutive residency is required for a foreigner applying for naturalisation, a foreign spouse married to a Danish citizen can do so after 4-6 years of residence (depending on the length of marriage). Renunciation of previous nationality is required. More relaxed provisions for Nordic, or EU citizens are available.
<i>Sweden</i>	A child born to non-Swedish parents does not acquire nationality at birth. It is accessible by making a declaration when a child is between 21-23 years old. <sup>23</sup>	Five consecutive years of residency for a foreigner, but exception can be made for applicants marrying to Swedish citizen. More relaxed provisions for a Nordic or EU citizen. Previous citizenship will be lost.
<i>Spain</i>	Spain does not grant Spanish citizenship to a child born to non-Spanish citizens. A child can gain citizenship during the age of 18-20 by declaration. Residence requirement is a minimum of 1 year. A third generation foreigner is granted citizenship if one of the parents also is born in Spain.	A spouse of a Spanish national can acquire Spanish nationality after a one-year preferential period. In order to avoid marriage of convenience, applicants are requested to prove the authenticity of the marriage (no <i>de facto/de juri</i> separation).
<i>Greece</i>	No entitlement to nationality on birth. When a child reaches 18, he/she can apply for naturalisation. The requirement that the applicant must lodge their naturalisation application 5 years prior does not apply to a Greece-born child. Naturalisation is not a right, but based on discretion.	There is a relaxed naturalisation requirement for spouses.
<i>Italy</i>	With continuous residence since birth, a child can apply for Italian citizenship at the age of 21.	Since 1992, spouses married to an Italian no longer receive automatic citizenship, however the spouse is entitled to apply for citizenship after six months residency in Italy, or three years of marriage.

20 Special consideration applies where a child's parents are EEA nationals who are exercising Treaty rights under European Community law.

21 Further, immigration judges have held that having a US citizen child is no bar to deportation. It may be a basis for obtaining a waiver of deportation only if the deportable alien has been in the US for more than 10 years and the deportation would cause extraordinary harm to the US citizen child. The US citizen child does not have the right to sponsor the parent until the child is 21 years of age.

22 When a couple applies to get married and one of them is an undocumented foreigner, the marriage can be postponed and investigated. The undocumented foreigner may be asked to leave France or be deported.

23 These children usually acquire the citizenship of their parents. Between ages 18-23, they have to opt for one or the other citizenship, dual citizenship is accepted only in exceptional circumstances and requires special procedures

24 However, spouses and children under age meeting extra requirements may be naturalised without fulfilling the minimum residence time, such as possession of a resident permit, no conviction of a major crime.

25 Requirements are 5 years of residency before the age of 16, and additional permanent residence between the age of 16-21. By the provision of Nordic Agreement of 1969, the period of residency in other Nordic countries is recognized by any Nordic countries at the acquisition of nationality (valid only the period spent before reaching 16 years old)

**Details of meetings with the Health Services on births to non-nationals  
in the Dublin Maternity Hospitals**

The Reception and Integration Agency of the Department of Justice, Equality and Law Reform attended a meeting of the Joint Hospitals Committee of the three major Dublin maternity hospitals in July 2003 to discuss arrangements for pregnant asylum seekers. In the course of the meeting it was made clear that the major concern of the Masters and management of the three Dublin maternity's is not about asylum seekers but about non-asylum seeking non-nationals availing of maternity services in Dublin.

Total births and births to non-nationals in the three Dublin maternity's in 2003 up to end June 2003\* are as follows:-

<b>Maternity Hospital</b>	<b>Number of Births</b>	<b>Births to non-national mothers</b>	<b>% births to non-nationals</b>
Rotunda*	3,742	1,144	30.6%
Holles Street	4,068	820	20.16%
The Coombe	3,791	852	22.82%
Total Births	11,601	2,816	24.3%

\*Rotunda figures to 22/7/03

<b>Asylum seeking women 18-49 years to end June 2003</b>	<b>Births to non national women to end June 2003</b>	<b>Projected births to non-national women to end 2003</b>
1,858	2,816	5,600

Figures from the Office of the Refugee Applications Commissioner (ORAC) show that 1858 women between the ages of 18 and 49 (child bearing years) made application for asylum up to end June, 2003. On the basis that 80% of women in this group are evidently pregnant on arrival, this gives a figure of 1520 pregnant women arriving in the first six months of the year. During the period, some 660 were deemed suitable for dispersal by the Balseskin clinic. While not all dispersed pregnant women avail of local services (many arrive back at Dublin hospitals unannounced and in or very near labour) - if we assume that 75% did so (i.e. 525) this leaves an estimated 995 who would have delivered in Dublin hospitals for the first 6 months of the year. These figures are not inclusive of the asylum seekers in private rented accommodation in Dublin prior to the start of the year.

The Masters of the hospitals state that that non-asylum seeking non-national women account for approximately two thirds of the non-national births. (This would appear to be borne out by the above figures). In this context they point out that quite a number arrive with their ante-natal notes from the U.K., deliver and return immediately. According to Dr. Declan

**Secret**

Keane, Master, Holles St., this cohort is now causing the hospitals greater difficulty than the asylum seekers.

The main concerns expressed by both Masters and management of the hospitals is how pregnant women can, with apparent ease, travel to Ireland, - ostensibly for a week's holiday - during which time they have their children and return home. In virtually all cases no payment is made for services delivered. The Masters also point out that they are receiving requests from places as far afield as Moscow for information on arrangements for having a child in a Dublin Maternity Hospital. (These requests are politely turned down). The Masters went on to say that the projected number of non-nationals giving birth in Dublin is sufficient to warrant a fourth major maternity facility in the city.

The hospital managers said that the strains being put on their financial, human and other resources by non-nationals (i.e. due late arrivals, high rates of HIV, Hepatitis and Syphilis) flow directly from immigration control issues which are solely matters for the Dept. of Justice, Equality and Law Reform and its Agencies. The issues arising were explained including the Constitutional issues, the difficulties faced by immigration personnel due to the Ireland/UK Common Travel Area and possible accusations of discrimination if they appear to concentrate of one nationality or ethnic group. However, both hospital management and Masters made it clear that, in their view, something needs to be done to tighten up controls in the immigration area such that the State does not have to continue bear an undue burden in maternity services.

**Reception & Integration Agency**  
**5th August, 2003**

**Brief update from Rotunda Hospital and issues concerning travel to Ireland.**

A recent meeting with the Rotunda Hospital gave the following information about births to non-nationals.

The projected births to non-nationals for 2003 at the Rotunda is 2,150. The table below gives a comparison of births from 1st Jan to 21st August for 2002 and 2003.

	<b>2002</b>	<b>% for year</b>	<b>2003</b>	<b>% for year</b>
<b>Irish</b>	3,082	71.8%	2,891	67.7%
<b>Non-national</b>	1,131	26.4%	1,281	30%
<b>Not entered</b>	81	1.8%	100	2.3%
		100%		100%
<b>Total Mothers delivering</b>	4,294		4,272	

Comparing 2003 to 2002, the number of Irish women delivering decreased by 6.2% - the number of non-nationals increased by 13.3%. While the hospital has no coherent way of

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determining nationality and/or status of the non-nationals, a sample exercise is being undertaken to estimate the percentage of asylum seeking and non-asylum seeking non-national mothers giving birth at the hospital.

3

Ann M. Hopkins

05/02/04 17:38

To: Dermot M. Woods/JUSTICE@JUSTICE  
cc: Sinead A. McSweeney/JUSTICE@JUSTICE, Patrick J.  
Folan/JUSTICE@JUSTICE, Paul T. Burns/JUSTICE@JUSTICE  
Subject: ibc

Dermot

Attached is the document which Pat Folan promised the Minister in the context of his discussions with Enda Kenny.

Paul Burns

----- Forwarded by Ann M. Hopkins/JUSTICE on 05/02/2004 17:51 -----

## Briefing note for all-party consultations

### **Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents**

#### **Background to Proposal**

1. The Programme for Government contains the following statement:

“We will keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish-born child and initiate all-party discussions on the issue of such constitutional or other measures which might be required.”

This document outlines the results of the Government’s review of this matter and the details of the current proposals to address this issue.

2. The Minister and the Government has been keeping this issue under review, in particular in relation to the outcome of the Supreme Court judgement of 23 January 2003 in the cases of L&O which clarified the position of the non-national parents of Irish born children. The Government’s strategy for the handling of claims for leave to remain in the State on the basis of an Irish born child in the light of the Supreme Court judgement was announced on 17 July 2003. This followed detailed consideration of the issues in the Minister’s Department, discussions with the Attorney General on the legal issues and discussions with the Department of Finance on the resources issues arising.

3. The strategy confirmed that there would no longer be a separate process for considering claims from non-national parents for leave to remain in the State on the basis of the birth of a child in Ireland. Such claims would not be considered where they came from parents (including asylum seekers) who had an alternative legal basis for remaining in the State. Claims from persons who did not have a legal basis for remaining in the State would only be considered in the context of representations on a Ministerial proposal to deport them. On 18 July 2003 a notice was published setting out the details of this policy as regards those persons whose claims had not been processed to finality.

#### **Action on foot of Government strategy**

4. Following the announcement of the Government’s policy and the publication of the notice on 18 July 2003, the Department began an initial processing of claims. Between 18 July and the end of December 1108 letters were sent to persons with an alternative legal basis for remaining in the State informing them that there was no longer an “Irish born child” status and that their claims would not be considered. Some 358 letters were sent to persons without such a legal basis for residence informing them that the Minister was considering deporting them.

5. Additional staff are being provided for the implementation of the Government’s strategy - 150 additional staff sanctioned by the Department of Finance are gradually being assigned by way of a levy on other Government Departments. These staff will use accommodation in Lower Grand Canal Street.

6. The Department has also agreed a new voluntary return programme with the International Organisation for Migration (IOM) which aims to assist families where non-national parents have claims for leave to remain in the State on the basis of their parentage of an Irish born child. It will operate for a period of 6 months commencing on 1 November and there is an incentive in the form of assistance for reintegration of the families into the parents' countries of origin. This will not be a cash payment, but rather training and other assistance.

#### **Asylum Reapplications**

7. As most of the applicants for leave to remain on the basis of an Irish born child are persons who have withdrawn from the asylum system, there was an expectation that a significant number of these would seek to reapply for asylum so as to prolong their stay in the State. Between 18 July and the end of December 2003, 203 persons had reapplied for asylum having previously withdrawn because of the birth of a child in Ireland. Of these 62 were persons who had been the subject of a letter informing them that the Minister was considering deporting them. The monthly breakdown is as follows :

July (18/7 to 31/7 incl)	August	September	October	November	December
56	96	28	12	9	2

8. It is likely that, as the new staff commence processing cases, the number of reapplications will increase. Applications for leave to remain from persons with current asylum claims will not be dealt with until the asylum claim has been determined. Where refugee status is not granted, the issue of the Irish born child will be a factor in considering whether the person should be deported or granted leave to remain based on humanitarian factors.

#### **What effect has the strategy had in reducing the attraction for illegal migration?**

9. It is now over twelve months since the Supreme Court Judgement in L&O. The Minister ceased accepting new applications for leave to remain from the parents of Irish born children over eleven months ago. The strategy for the handling of the outstanding cases has been operating since the announcement of the Government decision in July. There has been a reduction in asylum applications in the period since January 2003 as set out below (figures including reapplications) :

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
988	961	903	671	604	661	647	655	611	496	395	347

10. While the outcome of the Supreme Court judgement and the implementation of the Government strategy published in July have been a significant factor in this reduction, there were several other key developments this year which also impacted on the overall reduction in asylum applicants (with a consequent carry through to the Irish born child issue). These included :

- the elimination of rent supplement for asylum seekers,
- the introduction of sanctions for the employment of illegal immigrants in the Employment Permits Act 2003 in April 2003,
- the introduction of carriers liability in September 2003,

- changes in asylum legislation such as the introduction of the “safe country of origin” concept in September 2003, and
- ongoing operational strategies in relation to illegal immigration.

The reduction in asylum numbers attributable solely to the developments on the Irish born child issue is therefore impossible to determine.

### **Current situation**

11. As regards the number of asylum applicants who arrive in the State while pregnant, the data available from the Office of the Refugee Applications Commissioner show that over the past year, the number of asylum seekers pregnant at the time of application was almost 60% of the number of female asylum seekers aged 16 years and over. Details are set out in appendix 1. The figures in relation to new applications only (excluding reapplications from persons who had withdrawn from the asylum system and subsequently reapplied) are available for only 6 months (July to December 2003). While the total number of asylum seekers has dropped, the proportion of women who are pregnant remains very high. The rate of pregnancy is largely unchanged, averaging 57% of women aged over 16 years for the 6-month period. This compares with averages of 58% in the period March-December 2002 and 61% in January-June 2003. It is clear from these figures that there has been no significant change in the situation since the Supreme Court judgement and the implementation of the Government strategy on foot of it.

12. However, recent trends have indicated that the scale of the problem is even greater outside of the asylum seeker framework, with very large numbers of non-EEA nationals now coming to Ireland to give birth. The Minister has been informed of the growing concern among health care professionals about the rate of non-nationals coming to Ireland to give birth and the strains which this is placing on services. Data supplied by the Masters of the three Dublin Maternity Hospitals show that those hospitals alone have had 2,816 births to non-nationals in the first six months of last year. **[Figures for full year are currently being obtained but the trend in figures from one hospital show no fall off in the second half of the year.]** The percentage of such births was between 20% and 25% of the total number of births in public hospitals in the Dublin area. The Minister has been informed that this trend has not substantially abated since the Supreme Court decision in the L&O cases. The Dublin maternity hospitals projected in the region of 5,600 births in this category for 2003 in those three hospitals alone. When births in other hospitals, in particular, Drogheda, are taken into account, the national figures are likely to be even higher. The Dublin maternity hospitals estimate that two thirds of the births to non-nationals last year will have been to persons other than asylum seekers, many of whom follow the pattern of a very late arrival in the State to give birth.

13. There are broader, and indeed profound, implications for health and social policy in the figures mentioned above—both in terms of short-term pressure on maternity services and medical services generally and in medium- and long-term patterns of social provision and expenditure. There are also very obvious implications for the future of Irish immigration policy and for the maintenance of the integrity of Irish law on immigration and residence.

14. The Supreme Court judgement in the cases of L&O brought a valuable clarification of the position as regards the entitlements of non-national parents of an Irish born child to remain in the State. The actions undertaken on foot of it have had some effect in lessening the

attraction of illegal migration to Ireland. However, expectations that the number of non-national births in Ireland would drop significantly after L&O have not been fulfilled. Two out of three non-nationals births are to persons other than asylum seekers. The prospect of Irish citizenship (and thus EU citizenship) for children born here seems to have an attraction independent of possible parental residence.

### **The situation internationally**

15. The feature of Irish citizenship law which grants an entitlement to citizenship to all persons born on the island of Ireland is unique in the European Union, and unusual world-wide. Most other countries have laws whereby citizenship is acquired by descent from an existing citizen, with place of birth either wholly or largely irrelevant. This makes Ireland an attractive target destination for persons wishing to establish residence in the EU and with no other basis, or a less certain basis, for doing so elsewhere. All other Member States of the EU either provide citizenship to the child of a citizen or permanent resident only or else provide citizenship to a child born on its territory only after a period of residence in the state concerned and / or after attaining a certain age.

16. The most recent survey of the situation in a range of other states is contained in the recent IOM Report of an International Comparative Study of Migration Legislation and Practice, which was commissioned by this Department as part of the development of comprehensive new immigration legislation and was published in August 2002. The relevant extract from the IOM report is attached in appendix 2. It should also be noted that a number of other states have amended their law to exclude the possibility of the children of illegal immigrants obtaining citizenship by birth on the territory of the state (UK 1981, Australia 1986). It is clear from the report that within the European Union, Ireland is the only State where citizenship can be achieved primarily through birth within the State.

17. The fact remains that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other Member State of the European Union - in terms of the child's entitlement to Irish and European citizenship and the perceived benefits of this for the parents now or in the future. This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State.

### **Options for change**

18. The Government has considered two broad strategic options for changing the current situation to discourage non-nationals from having children here in the expectation of Irish citizenship (and EU citizenship) for their children : to legislate based on the current constitutional provisions; or, alternatively, to promote a constitutional referendum to allow for a significant legislative change.

### **The legislative option**

19. This option would attempt to legislate as far as possible in a manner which would exclude from automatic Irish nationality and citizenship any person who was born to parents neither of whom was or was entitled to be an Irish citizen at the time of the persons birth, subject to such exceptions as might be provided for in the statute (including the obligation to avoid statelessness). In view of the current constitutional provisions this option is not considered viable.

### **The Constitutional amendment option**

20. It is considered that an amendment to the Constitution will be necessary to address this issue. A range of possibilities for such change has been considered. It has been borne in mind that it would be desirable that such change should not involve a direct amendment to Article 2. The proposal therefore is to amend Article 9 of the Constitution to provide that the entitlement to Irish citizenship of children born in Ireland to non-national parents would be a matter to be determined in accordance with law. This would provide a firm constitutional basis for the necessary legislation.

### **Legislation to accompany constitutional change**

21. The legislation to accompany constitutional change will be carefully drafted to achieve the following aims :

- (1) a clear exclusion of automatic entitlement to citizenship based on birth in Ireland where the parents are non-nationals,
- (2) some entitlement to citizenship where that is necessary under international law to avoid statelessness,
- (3) some entitlement for long term non-national residents to apply for Irish citizenship for their children,
- (4) to define the concept of long term status itself and the conditions relating to it and the procedures for acquiring this status, and for renewal and removal or loss of status,
- (5) a partial curtailment of the existing citizenship provisions at s. 13 of the 1956 Act in relation to persons born on Irish registered vessels or aircraft wherever they may be (though a change of this nature could be brought about even in the current constitutional context).

It is intended to outline such legislative changes in the context of the referendum as has been done on other occasions.

## Appendix 1

### Data in relation to permission to remain in the State on the basis of an Irish born child

#### 1) Applications for leave to remain on the basis of having an Irish born child from current and former asylum seekers

##### *1.1 Applications received by month:*

A table of applications received from current and former asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2001	416	161	354	316	517	403	500	655	634	547	744	677	5924
2002	936	625	421	577	621	429	419	594	409	559	542	417	6549
2003	721	261	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	982

\* none accepted

At 31 December 2003, there were 8,655 applications on hand from current and former asylum seekers.

##### *1.2 Comparison of asylum applications with asylum Irish born child applications:*

In the year 2002, 6,549 applications for leave to remain were received - over 545 per month. When compared with the figure for all asylum applications in the same period, 11,634, Irish born child applications from current or former asylum seekers were running at 56% of the level of asylum applications.

The trend in asylum applications in 2003 was downwards with a 32% reduction in the number of applications in 2003 (7,939) compared to 2002 (11,634). Since January 2003, the month of the decision of the Supreme Court in the cases of L & O, there has been a steady decrease in the number of asylum applications received. While it is not possible to say that this decrease is as a direct result of the Supreme Court decision, it is reasonable to assume that it has had some impact.

##### *1.3 Withdrawals from the asylum system:*

The number of withdrawals from the asylum process on the basis of having a claim for leave to remain as the parent of an Irish born child averaged 332 cases per month during 2001. This rose to an average of 469 cases per month in 2002 with 5,622 persons withdrawing. This represented almost half of the average number of applications per month.

In 2003, the number of withdrawals from the asylum process dropped sharply, from 491 persons withdrawing in January to only 3 persons in December.

##### *1.4 Re-entry to the asylum system:*

Since the Supreme Court decision of 23 January 2003 in the case of *L and O*, persons who had previously withdrawn their application for asylum in order to apply for permission to remain as a parent of an Irish born child have sought to re enter the asylum system and figures are set out below.

Jan (23/1 - 31/1)	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
2	14	58	32	28	11	66	96	28	12	9	2

**2) Applications for leave to remain on the basis of having an Irish born child from persons other than asylum seekers**

**2.1 Applications received by month:**

A table of applications received from persons other than asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
<b>2001</b>	-	-	92	54	76	55	62	85	17	65	70	70	646
<b>2002</b>	165	140	138	150	201	149	162	219	166	217	218	146	2071
<b>2003</b>	324	127	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	451

\* none accepted

The increase in applications over the last year reflects the increasing numbers of non-nationals legally resident in the State. At 31 December 2003, there were 916 such applications on hand.

**3) Miscellaneous information**

**3.1 Pregnant asylum applicants**

Information made available to the Office of the Refugee Applications Commissioner indicates that over the past year the number of asylum seekers pregnant at the time of application was around 58% of the number of female asylum seekers aged 16 years and over. See figures below.

**Figures for Pregnant Female Asylum Seekers**

**All Applications** - new applications and applications from persons who had withdrawn from the asylum system and subsequently reapplied

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2002:</b>						
March	932	476	384	179	38%	47%
April	888	464	384	224	48%	58%
May	795	411	346	203	49%	59%
June	869	423	339	198	47%	58%
July	1133	557	454	249	45%	55%
August	995	523	414	254	49%	61%
September	1199	603	483	243	40%	50%
October	1148	582	466	280	48%	60%
November	984	515	403	261	51%	65%
December	1090	563	457	312	55%	68%
<b>Total - Mar/Dec '02</b>	<b>10033</b>	<b>5117</b>	<b>4130</b>	<b>2403</b>	<b>47%</b>	<b>58%</b>
<b>2003:</b>						
January	979	502	433	282	56%	65%
February	947	481	393	257	53%	65%
March	892	477	390	225	47%	58%
April	667	340	286	180	53%	63%
May	604	299	251	147	49%	59%
June	661	335	275	155	46%	56%
July	647	322	256	135	42%	53%
August	655	331	271	130	39%	48%

September	611	295	234	119	40%	51%
October	496	246	194	103	42%	53%
November	395	181	152	81	45%	53%
December	347	151	135	79	52%	59%
<b>Total - Jan/Dec '03</b>	<b>7901</b>	<b>3960</b>	<b>3270</b>	<b>1893</b>	<b>48%</b>	<b>58%</b>

### **New Applications only**

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2003:</b>						
July	754	271	213	133	49%	62%
August	550	265	217	128	48%	59%
September	580	277	218	117	42%	54%
October	478	236	186	102	43%	55%
November	385	176	148	80	46%	54%
December	341	148	132	78	53%	59%
<b>Total - July/Dec '03</b>	<b>2908</b>	<b>1373</b>	<b>1114</b>	<b>638</b>	<b>46%</b>	<b>57%</b>

### ***3.2 Births to non-nationals in the State***

Statistics on the nationality of mothers of children born in the State have not been collected in a systematic way in the past. However, maternity hospitals have begun to collect such data. Data collected by the Reception and Integration Agency from the Dublin maternity hospitals recently showed that an average of **1 out of every 5 children now born in Dublin has a non-EU national mother**. It is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth.

### ***3.3 Situation in maternity hospitals***

The situation is a cause of serious concern to the maternity hospitals, in Dublin in particular. The Masters of the Dublin maternity hospitals have repeatedly expressed their concerns at the numbers of non-national mothers giving birth in Dublin. Figures quoted for the period January to June 2003 show that of the total number of births in the Dublin maternity hospitals (11,601) some 2,816 or 24.3% were to non-national mothers. At present their major concern is the rise in births to non-national mothers other than those in the asylum system. Anecdotal evidence suggests that many women are travelling from the UK in the later stages of pregnancy. This creates difficulties for hospital staff, in particular in terms of an unpredictable workload and dealing with persons with no medical history in the State. The situation outlined by the Masters was also the subject of a report undertaken by the Reception and Integration Agency in conjunction with the Northern Area Health Board. This report cited difficulties for the Dublin maternity hospitals in relation to—

- having to deal with unpredictable workloads—many arrive as late bookings;
- dealing with persons with no medical history in the State and who arrive in late stages of pregnancy, including dealing with relatively high levels of HIV and other illnesses;
- dealing with patients with little knowledge of English and where there may also be cultural issues causing practical difficulties.

As well as the additional stress on hospital staff, these cases were also very resource intensive and were a significant additional burden on hospital resources—the National Maternity Hospital alone estimated additional costs of almost €0.5m for 2002.



Denmark	A child of non-Denmark citizen will not receive nationality at birth. Since 1999, young foreigners aged 18-23 with minimum 10 years of residence in Denmark (5 years within the last 6 years) can request naturalisation.	While seven years consecutive residency is required for a foreigner applying for naturalisation, a foreign spouse married to a Danish citizen can do so after 4-6 years of residence (depending on the length of marriage). Renunciation of previous nationality is required. More relaxed provisions for Nordic, or EU citizens are available.
Sweden	A child born to non-Swedish parents does not acquire nationality at birth. It is accessible by making a declaration when a child is between 21-23 years old. <sup>25</sup>	Five consecutive years of residency for a foreigner, but exception can be made for applicants marrying to Swedish citizen. More relaxed provisions for a Nordic or EU citizen. Previous citizenship will be lost.
Spain	Spain does not grant Spanish citizenship to a child born to non-Spanish citizens. A child can gain citizenship during the age of 18-20 by declaration. Residence requirement is a minimum of 1 year. A third generation foreigner is granted citizenship if one of the parents also is born in Spain.	A spouse of a Spanish national can acquire Spanish nationality after a one-year preferential period.  In order to avoid marriage of convenience, applicants are requested to prove the authenticity of the marriage (no <i>de facto/de juri</i> separation).
Greece	No entitlement to nationality on birth. When a child reaches 18, he/she can apply for naturalisation. The requirement that the applicant must lodge their naturalisation application 5 years prior does not apply to a Greece-born child. Naturalisation is not a right, but based on discretion.	There is a relaxed naturalisation requirement for spouses.
Italy	With continuous residence since birth, a child can apply for Italian citizenship at the age of 21.	Since 1992, spouses married to an Italian no longer receive automatic citizenship, however the spouse is entitled to apply for citizenship after six months residency in Italy, or three years of marriage.

20 Special consideration applies where a child's parents are EEA nationals who are exercising Treaty rights under European Community law.

21 Further, immigration judges have held that having a US citizen child is no bar to deportation. It may be a basis for obtaining a waiver of deportation only if the deportable alien has been in the US for more than 10 years and the deportation would cause extraordinary harm to the US citizen child. The US citizen child does not have the right to sponsor the parent until the child is 21 years of age.

22 When a couple applies to get married and one of them is an undocumented foreigner, the marriage can be postponed and investigated. The undocumented foreigner may be asked to leave France or be deported.

23 These children usually acquire the citizenship of their parents. Between ages 18-23, they have to opt for one or the other citizenship, dual citizenship is accepted only in exceptional circumstances and requires special procedures

24 However, spouses and children under age meeting extra requirements may be naturalised without fulfilling the minimum residence time, such as possession of a resident permit, no conviction of a major crime.

25 Requirements are 5 years of residency before the age of 16, and additional permanent residence between the age of 16-21. By the provision of Nordic Agreement of 1969, the period of residency in other Nordic countries is recognized by any Nordic countries at the acquisition of nationality (valid only the period spent before reaching 16 years old)

## Briefing note for all-party consultations

### **Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents**

#### **Background to Proposal**

1. The Programme for Government contains the following statement:

“We will keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish-born child and initiate all-party discussions on the issue of such constitutional or other measures which might be required.”

This document outlines the results of the Government’s review of this matter and the details of the current proposals to address this issue.

2. The Minister and the Government has been keeping this issue under review, in particular in relation to the outcome of the Supreme Court judgement of 23 January 2003 in the cases of L&O which clarified the position of the non-national parents of Irish born children. The Government’s strategy for the handling of claims for leave to remain in the State on the basis of an Irish born child in the light of the Supreme Court judgement was announced on 17 July 2003. This followed detailed consideration of the issues in the Minister’s Department, discussions with the Attorney General on the legal issues and discussions with the Department of Finance on the resources issues arising.

3. The strategy confirmed that there would no longer be a separate process for considering claims from non-national parents for leave to remain in the State on the basis of the birth of a child in Ireland. Such claims would not be considered where they came from parents (including asylum seekers) who had an alternative legal basis for remaining in the State. Claims from persons who did not have a legal basis for remaining in the State would only be considered in the context of representations on a Ministerial proposal to deport them. On 18 July 2003 a notice was published setting out the details of this policy as regards those persons whose claims had not been processed to finality.

#### **Action on foot of Government strategy**

4. Following the announcement of the Government’s policy and the publication of the notice on 18 July 2003, the Department began an initial processing of claims. Between 18 July and the end of December 1108 letters were sent to persons with an alternative legal basis for remaining in the State informing them that there was no longer an “Irish born child” status and that their claims would not be considered. Some 358 letters were sent to persons without such a legal basis for residence informing them that the Minister was considering deporting them.

5. Additional staff are being provided for the implementation of the Government’s strategy - 150 additional staff sanctioned by the Department of Finance are gradually being assigned by way of a levy on other Government Departments. These staff will use accommodation in Lower Grand Canal Street.

6. The Department has also agreed a new voluntary return programme with the International Organisation for Migration (IOM) which aims to assist families where non-national parents have claims for leave to remain in the State on the basis of their parentage of an Irish born child. It will operate for a period of 6 months commencing on 1 November and there is an incentive in the form of assistance for reintegration of the families into the parents' countries of origin. This will not be a cash payment, but rather training and other assistance.

#### **Asylum Reapplications**

7. As most of the applicants for leave to remain on the basis of an Irish born child are persons who have withdrawn from the asylum system, there was an expectation that a significant number of these would seek to reapply for asylum so as to prolong their stay in the State. Between 18 July and the end of December 2003, 203 persons had reapplied for asylum having previously withdrawn because of the birth of a child in Ireland. Of these 62 were persons who had been the subject of a letter informing them that the Minister was considering deporting them. The monthly breakdown is as follows :

July (18/7 to 31/7 incl)	August	September	October	November	December
56	96	28	12	9	2

8. It is likely that, as the new staff commence processing cases, the number of reapplications will increase. Applications for leave to remain from persons with current asylum claims will not be dealt with until the asylum claim has been determined. Where refugee status is not granted, the issue of the Irish born child will be a factor in considering whether the person should be deported or granted leave to remain based on humanitarian factors.

#### **What effect has the strategy had in reducing the attraction for illegal migration?**

9. It is now over twelve months since the Supreme Court Judgement in L&O. The Minister ceased accepting new applications for leave to remain from the parents of Irish born children over eleven months ago. The strategy for the handling of the outstanding cases has been operating since the announcement of the Government decision in July. There has been a reduction in asylum applications in the period since January 2003 as set out below (figures including reapplications) :

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
988	961	903	671	604	661	647	655	611	496	395	347

10. While the outcome of the Supreme Court judgement and the implementation of the Government strategy published in July have been a significant factor in this reduction, there were several other key developments this year which also impacted on the overall reduction in asylum applicants (with a consequent carry through to the Irish born child issue). These included :

- the elimination of rent supplement for asylum seekers,
- the introduction of sanctions for the employment of illegal immigrants in the Employment Permits Act 2003 in April 2003,
- the introduction of carriers liability in September 2003,

- changes in asylum legislation such as the introduction of the “safe country of origin” concept in September 2003, and
- ongoing operational strategies in relation to illegal immigration.

The reduction in asylum numbers attributable solely to the developments on the Irish born child issue is therefore impossible to determine.

### **Current situation**

11. As regards the number of asylum applicants who arrive in the State while pregnant, the data available from the Office of the Refugee Applications Commissioner show that over the past year, the number of asylum seekers pregnant at the time of application was almost 60% of the number of female asylum seekers aged 16 years and over. Details are set out in appendix 1. The figures in relation to new applications only (excluding reapplications from persons who had withdrawn from the asylum system and subsequently reapplied) are available for only 6 months (July to December 2003). While the total number of asylum seekers has dropped, the proportion of women who are pregnant remains very high. The rate of pregnancy is largely unchanged, averaging 57% of women aged over 16 years for the 6-month period. This compares with averages of 58% in the period March-December 2002 and 61% in January-June 2003. It is clear from these figures that there has been no significant change in the situation since the Supreme Court judgement and the implementation of the Government strategy on foot of it.

12. However, recent trends have indicated that the scale of the problem is even greater outside of the asylum seeker framework, with very large numbers of non-EEA nationals now coming to Ireland to give birth. The Minister has been informed of the growing concern among health care professionals about the rate of non-nationals coming to Ireland to give birth and the strains which this is placing on services. Data supplied by the Masters of the three Dublin Maternity Hospitals show that those hospitals alone have had 2,816 births to non-nationals in the first six months of last year. **[Figures for full year are currently being obtained but the trend in figures from one hospital show no fall off in the second half of the year.]** The percentage of such births was between 20% and 25% of the total number of births in public hospitals in the Dublin area. The Minister has been informed that this trend has not substantially abated since the Supreme Court decision in the L&O cases. The Dublin maternity hospitals projected in the region of 5,600 births in this category for 2003 in those three hospitals alone. When births in other hospitals, in particular, Drogheda, are taken into account, the national figures are likely to be even higher. The Dublin maternity hospitals estimate that two thirds of the births to non-nationals last year will have been to persons other than asylum seekers, many of whom follow the pattern of a very late arrival in the State to give birth.

13. There are broader, and indeed profound, implications for health and social policy in the figures mentioned above—both in terms of short-term pressure on maternity services and medical services generally and in medium- and long-term patterns of social provision and expenditure. There are also very obvious implications for the future of Irish immigration policy and for the maintenance of the integrity of Irish law on immigration and residence.

14. The Supreme Court judgement in the cases of L&O brought a valuable clarification of the position as regards the entitlements of non-national parents of an Irish born child to remain in the State. The actions undertaken on foot of it have had some effect in lessening the

attraction of illegal migration to Ireland. However, expectations that the number of non-national births in Ireland would drop significantly after L&O have not been fulfilled. Two out of three non-nationals births are to persons other than asylum seekers. The prospect of Irish citizenship (and thus EU citizenship) for children born here seems to have an attraction independent of possible parental residence.

### **The situation internationally**

15. The feature of Irish citizenship law which grants an entitlement to citizenship to all persons born on the island of Ireland is unique in the European Union, and unusual world-wide. Most other countries have laws whereby citizenship is acquired by descent from an existing citizen, with place of birth either wholly or largely irrelevant. This makes Ireland an attractive target destination for persons wishing to establish residence in the EU and with no other basis, or a less certain basis, for doing so elsewhere. All other Member States of the EU either provide citizenship to the child of a citizen or permanent resident only or else provide citizenship to a child born on its territory only after a period of residence in the state concerned and / or after attaining a certain age.

16. The most recent survey of the situation in a range of other states is contained in the recent IOM Report of an International Comparative Study of Migration Legislation and Practice, which was commissioned by this Department as part of the development of comprehensive new immigration legislation and was published in August 2002. The relevant extract from the IOM report is attached in appendix 2. It should also be noted that a number of other states have amended their law to exclude the possibility of the children of illegal immigrants obtaining citizenship by birth on the territory of the state (UK 1981, Australia 1986). It is clear from the report that within the European Union, Ireland is the only State where citizenship can be achieved primarily through birth within the State.

17. The fact remains that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other Member State of the European Union - in terms of the child's entitlement to Irish and European citizenship and the perceived benefits of this for the parents now or in the future. This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State.

### **Options for change**

18. The Government has considered two broad strategic options for changing the current situation to discourage non-nationals from having children here in the expectation of Irish citizenship (and EU citizenship) for their children : to legislate based on the current constitutional provisions; or, alternatively, to promote a constitutional referendum to allow for a significant legislative change.

### **The legislative option**

19. This option would attempt to legislate as far as possible in a manner which would exclude from automatic Irish nationality and citizenship any person who was born to parents neither of whom was or was entitled to be an Irish citizen at the time of the persons birth, subject to such exceptions as might be provided for in the statute (including the obligation to avoid statelessness). In view of the current constitutional provisions this option is not considered viable.

### **The Constitutional amendment option**

20. It is considered that an amendment to the Constitution is capable of addressing this issue. A range of possibilities for such change has been considered. It has been borne in mind that it would be desirable that such change should not involve a direct amendment to Article 2. The proposal therefore is to amend Article 9 of the Constitution to provide that the entitlement to Irish citizenship of children born in Ireland to non-national parents neither of whom are entitled to citizenship would be a matter to be determined in accordance with law. This would provide a firm constitutional basis for the necessary legislation.

### **Legislation to accompany constitutional change**

21. The legislation to accompany constitutional change will be carefully drafted to achieve the following aims :

- (1) restriction of the right to Irish citizenship to Irish born children whose parents are non-nationals to cases where the child and parents have been legally resident in Ireland on a medium and long-term basis,
- (2) entitlement to citizenship where that is necessary under international law to avoid statelessness,
- (3) an entitlement for medium and long term non-national residents to apply for Irish citizenship for their children,
- (4) to define the concept of medium and long term status itself and the conditions relating to it and the procedures for acquiring this status,
- (5) a partial curtailment of the existing citizenship provisions at s. 13 of the 1956 Act in relation to persons born on Irish registered vessels or aircraft wherever they may be (though a change of this nature could be brought about even in the current constitutional context).

It is intended to outline such legislative changes in the context of the referendum as has been done on other occasions.

## Appendix 1

### Data in relation to permission to remain in the State on the basis of an Irish born child

#### 1) Applications for leave to remain on the basis of having an Irish born child from current and former asylum seekers

##### *1.1 Applications received by month:*

A table of applications received from current and former asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
<b>2001</b>	416	161	354	316	517	403	500	655	634	547	744	677	5924
<b>2002</b>	936	625	421	577	621	429	419	594	409	559	542	417	6549
<b>2003</b>	721	261	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	982

\* none accepted

At 31 December 2003, there were 8,655 applications on hand from current and former asylum seekers.

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In the year 2002, 6,549 applications for leave to remain were received - over 545 per month. When compared with the figure for all asylum applications in the same period, 11,634, Irish born child applications from current or former asylum seekers were running at 56% of the level of asylum applications.

The trend in asylum applications in 2003 was downwards with a 32% reduction in the number of applications in 2003 (7,939) compared to 2002 (11,634). Since January 2003, the month of the decision of the Supreme Court in the cases of L & O, there has been a steady decrease in the number of asylum applications received. While it is not possible to say that this decrease is as a direct result of the Supreme Court decision, it is reasonable to assume that it has had some impact.

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In 2003, the number of withdrawals from the asylum process dropped sharply, from 491 persons withdrawing in January to only 3 persons in December.

##### *1.4 Re-entry to the asylum system:*

Since the Supreme Court decision of 23 January 2003 in the case of *L and O*, persons who had previously withdrawn their application for asylum in order to apply for permission to remain as a parent of an Irish born child have sought to re enter the asylum system and figures are set out below.

Jan (23/1 - 31/1)	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
2	14	58	32	28	11	66	96	28	12	9	2

## 2) Applications for leave to remain on the basis of having an Irish born child from persons other than asylum seekers

### 2.1 Applications received by month:

A table of applications received from persons other than asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
<b>2001</b>	-	-	92	54	76	55	62	85	17	65	70	70	646
<b>2002</b>	165	140	138	150	201	149	162	219	166	217	218	146	2071
<b>2003</b>	324	127	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	451

\* none accepted

The increase in applications over the last year reflects the increasing numbers of non-nationals legally resident in the State. At 31 December 2003, there were 916 such applications on hand.

## 3) Miscellaneous information

### 3.1 Pregnant asylum applicants

Information made available to the Office of the Refugee Applications Commissioner indicates that over the past year the number of asylum seekers pregnant at the time of application was around 58% of the number of female asylum seekers aged 16 years and over. See figures below.

### Figures for Pregnant Female Asylum Seekers

**All Applications** - new applications and applications from persons who had withdrawn from the asylum system and subsequently reapplied

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2002:</b>						
March	932	476	384	179	38%	47%
April	888	464	384	224	48%	58%
May	795	411	346	203	49%	59%
June	869	423	339	198	47%	58%
July	1133	557	454	249	45%	55%
August	995	523	414	254	49%	61%
September	1199	603	483	243	40%	50%
October	1148	582	466	280	48%	60%
November	984	515	403	261	51%	65%
December	1090	563	457	312	55%	68%
<b>Total - Mar/Dec '02</b>	<b>10033</b>	<b>5117</b>	<b>4130</b>	<b>2403</b>	<b>47%</b>	<b>58%</b>
<b>2003:</b>						
January	979	502	433	282	56%	65%
February	947	481	393	257	53%	65%
March	892	477	390	225	47%	58%
April	667	340	286	180	53%	63%
May	604	299	251	147	49%	59%
June	661	335	275	155	46%	56%
July	647	322	256	135	42%	53%
August	655	331	271	130	39%	48%

September	611	295	234	119	40%	51%
October	496	246	194	103	42%	53%
November	395	181	152	81	45%	53%
December	347	151	135	79	52%	59%
<b>Total - Jan/Dec '03</b>	<b>7901</b>	<b>3960</b>	<b>3270</b>	<b>1893</b>	<b>48%</b>	<b>58%</b>

### New Applications only

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2003:</b>						
July	754	271	213	133	49%	62%
August	550	265	217	128	48%	59%
September	580	277	218	117	42%	54%
October	478	236	186	102	43%	55%
November	385	176	148	80	46%	54%
December	341	148	132	78	53%	59%
<b>Total - July/Dec '03</b>	<b>2908</b>	<b>1373</b>	<b>1114</b>	<b>638</b>	<b>46%</b>	<b>57%</b>

### *3.2 Births to non-nationals in the State*

Statistics on the nationality of mothers of children born in the State have not been collected in a systematic way in the past. However, maternity hospitals have begun to collect such data. Data collected by the Reception and Integration Agency from the Dublin maternity hospitals recently showed that an average of **1 out of every 5 children now born in Dublin has a non-EU national mother**. It is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth.

### *3.3 Situation in maternity hospitals*

The situation is a cause of serious concern to the maternity hospitals, in Dublin in particular. The Masters of the Dublin maternity hospitals have repeatedly expressed their concerns at the numbers of non-national mothers giving birth in Dublin. Figures quoted for the period January to June 2003 show that of the total number of births in the Dublin maternity hospitals (11,601) some 2,816 or 24.3% were to non-national mothers. At present their major concern is the rise in births to non-national mothers other than those in the asylum system. Anecdotal evidence suggests that many women are travelling from the UK in the later stages of pregnancy. This creates difficulties for hospital staff, in particular in terms of an unpredictable workload and dealing with persons with no medical history in the State. The situation outlined by the Masters was also the subject of a report undertaken by the Reception and Integration Agency in conjunction with the Northern Area Health Board. This report cited difficulties for the Dublin maternity hospitals in relation to—

- having to deal with unpredictable workloads—many arrive as late bookings;
- dealing with persons with no medical history in the State and who arrive in late stages of pregnancy, including dealing with relatively high levels of HIV and other illnesses;
- dealing with patients with little knowledge of English and where there may also be cultural issues causing practical difficulties.

As well as the additional stress on hospital staff, these cases were also very resource intensive and were a significant additional burden on hospital resources—the National Maternity Hospital alone estimated additional costs of almost €0.5m for 2002.



## Appendix 2

## NATIONALITY

	Rights of a child born to non-nationals	Marriage between a citizen and a non-national
Australia	A child acquires Australian citizenship if one of the parents is either an Australia citizen or a permanent resident. A child born to parents illegally in the country has no claim to citizenship and may be removed with the parent/s in accordance with normal removal procedures.	<p><b>A Spouse Temporary Visa</b> is issued to a spouse of an Australian citizen/resident. Required conditions for acquiring this visa include minimum 12 months spouse relationship and the proof of a genuine relationship.</p> <p>No preferential provision for the spouses of Australian citizen/residents for acquiring citizenship.</p>
UK	Prior to 1 January 1983, almost every child born in the United Kingdom was a citizen of the United Kingdom and Colonies. Under the British Nationality Act 1981, a child born in the United Kingdom on or after 1 January 1983 will be a British citizen if either the father or the mother is a British citizen or is legally settled in the UK <sup>20</sup> . If neither parent is a British citizen or legally settled in the UK the child will not be a British citizen at birth.	<p><b>A Settlement Visa</b> is available for non-UK national marrying a British citizen or a person with permanent residency in the UK. The visa is valid for one year and candidates are usually interviewed. If the marriage is subsisting at the end of that year, then an application can be made to the Home Office for permanent residency. An application for British citizenship can be made after having been in the UK for three years if married to a British citizen (or five years if married to a non-British citizen).</p>
USA	A child born in the US is entitled to US citizenship. The parents do not get citizenship unless they have some legal basis for obtaining legal permanent resident status/otherwise meet the naturalisation eligibility requirements. The parents can take the child with them when they leave the country or arrange for someone to take care of the child in the US <sup>21</sup>	<p>The spouse is given 90 days entry status and given conditional permanent residence status based on marriage. The condition can be removed when re-interviewed two years later to make sure that the marriage is valid.</p> <p>The US offers naturalisation to spouses of US citizens three, rather than the more typical five, years after admission as a permanent resident. The US has marriage fraud provisions that help deter marriages made solely for immigration purposes.</p>
New Zealand		<p><b>Visitor visa</b> can be issued to fiancée/ fiancé of a New Zealand citizen and resident.</p> <p>If foreign nationals are married to a New Zealand citizen or resident, a New Zealand spouse can apply for a permanent visa provided that his/her foreign spouse meets <u>health and character</u> requirements. New Zealand citizens and residents who have sponsored two or more spouses, have applied for spouse sponsoring within the last 5 years, or have a record of domestic violence are not eligible to apply for visa for spouses.</p> <p>After two years residency, the spouse is eligible for NZ citizenship.</p>
France	A child born in France to foreign parents automatically becomes a French national at the age of majority (18). If a child is over 13, he/she can also attain citizenship with the parent's consent. If over 16, a request can be made for nationality. A third generation immigrant born in France is automatically entitled to French nationality.	<p>Resident permit is given to foreigners married for at least one year rather than the usually 3 years to a French national, provided that the marriage is still subsisting, and that the spouse has maintained French nationality. An undocumented foreigner marrying a French national can not acquire French citizenship.<sup>22</sup></p> <p>Foreign spouse may acquire naturalisation papers after two years. Within a year, the authority has the right to oppose the naturalisation process. France maintains strict measures against marriage of convenience.</p>
Germany	If one parent has been a legal resident in Germany for at least 8 years permanently and has a permanent resident permit, children acquire German citizenship at the parent's request. <sup>23</sup>	Aliens fulfilling the following requirements can be naturalised on request with the requirement of legal permanent residence for at least eight years. <sup>24</sup>

Denmark	A child of non-Denmark citizen will not receive nationality at birth. Since 1999, young foreigners aged 18-23 with minimum 10 years of residence in Denmark (5 years within the last 6 years) can request naturalisation.	While seven years consecutive residency is required for a foreigner applying for naturalisation, a foreign spouse married to a Danish citizen can do so after 4-6 years of residence (depending on the length of marriage). Renunciation of previous nationality is required. More relaxed provisions for Nordic, or EU citizens are available.
Sweden	A child born to non-Swedish parents does not acquire nationality at birth. It is accessible by making a declaration when a child is between 21-23 years old. <sup>25</sup>	Five consecutive years of residency for a foreigner, but exception can be made for applicants marrying to Swedish citizen. More relaxed provisions for a Nordic or EU citizen. Previous citizenship will be lost.
Spain	Spain does not grant Spanish citizenship to a child born to non-Spanish citizens. A child can gain citizenship during the age of 18-20 by declaration. Residence requirement is a minimum of 1 year. A third generation foreigner is granted citizenship if one of the parents also is born in Spain.	A spouse of a Spanish national can acquire Spanish nationality after a one-year preferential period. In order to avoid marriage of convenience, applicants are requested to prove the authenticity of the marriage (no <i>de facto/de juri</i> separation).
Greece	No entitlement to nationality on birth. When a child reaches 18, he/she can apply for naturalisation. The requirement that the applicant must lodge their naturalisation application 5 years prior does not apply to a Greece-born child. Naturalisation is not a right, but based on discretion.	There is a relaxed naturalisation requirement for spouses.
Italy	With continuous residence since birth, a child can apply for Italian citizenship at the age of 21.	Since 1992, spouses married to an Italian no longer receive automatic citizenship, however the spouse is entitled to apply for citizenship after six months residency in Italy, or three years of marriage.

20 Special consideration applies where a child's parents are EEA nationals who are exercising Treaty rights under European Community law.

21 Further, immigration judges have held that having a US citizen child is no bar to deportation. It may be a basis for obtaining a waiver of deportation only if the deportable alien has been in the US for more than 10 years and the deportation would cause extraordinary harm to the US citizen child. The US citizen child does not have the right to sponsor the parent until the child is 21 years of age.

22 When a couple applies to get married and one of them is an undocumented foreigner, the marriage can be postponed and investigated. The undocumented foreigner may be asked to leave France or be deported.

23 These children usually acquire the citizenship of their parents. Between ages 18-23, they have to opt for one or the other citizenship, dual citizenship is accepted only in exceptional circumstances and requires special procedures

24 However, spouses and children under age meeting extra requirements may be naturalised without fulfilling the minimum residence time, such as possession of a resident permit, no conviction of a major crime.

25 Requirements are 5 years of residency before the age of 16, and additional permanent residence between the age of 16-21. By the provision of Nordic Agreement of 1969, the period of residency in other Nordic countries is recognized by any Nordic countries at the acquisition of nationality (valid only the period spent before reaching 16 years old)

## SECRET

Proposed referendum dealing with the right to Irish citizenship for children born in  
Ireland of non-national parents

BB 5/3/2004  
1. Mr Browne, Assistant Secretary  
As discussed.

2. Minister

*Emailed to Minister's Office  
5.3.2004*

Herewith, for your approval to transmit to Cabinet Secretariat for consideration at the Government meeting on Tuesday next 9 March 2004, is a draft Memorandum to the Government on the above matter.

The Memorandum seeks approval for the drafting of the text of an Amendment of the Constitution Bill and also of an implementing Irish Nationality and Citizenship Bill (schemes of those Bills are at appendices 1 and 2 respectively).

The proposal is to have the two Bills drafted in tandem, and to publish in draft form the implementing Bill at the same time as the Amendment of the Constitution Bill (see paragraph 8 of draft Memorandum) as a means of informing public debate.

The Scheme of the Amendment of the Constitution Bill countenances the possibility of putting more detail (to be based on the implementing Bill) into the amendment to be put to the people than is in the present draft text. If appropriate language for such additional detail can be arrived at, it would have the possibility of adding to the acceptability of the proposal.

To keep in line with the schedule (copy attached) for ensuring that the matter is put to the people on 11 June, it is desirable to put the Memorandum before the Government at its meeting on 9 March.

A copy of the unofficial consolidation of the Irish Nationality and Citizenship Acts is attached for your information.

This submission and its associated papers have been prepared in close consultation with the Immigration Division (Pat Folan and Mick Gleeson).

*bi*  
Brian Ingoldsby  
Civil Law Reform Division  
5 March 2004

*8/3/2004  
changes made to  
Mick Gleeson as  
per wishes of 8/3*

*A.A.*

600023

SECRET

**Oifig an Aire Dlí agus Cirt, Comhionnanais agus Athchóirithe Dlí: Office of the  
Minister for Justice, Equality and Law Reform**

8 March 2004

**Proposed Referendum on the citizenship rights of children born in Ireland to  
non-national parents**

**Decision sought**

1. The Minister for Justice, Equality and Law Reform seeks the approval of the Government to—
  - (i) draft a Bill to amend the Constitution on the lines of the Scheme at Appendix 1 to this Memorandum, and
  - (ii) draft an implementing Bill, on the lines of the Scheme at appendix 2 to his Memorandum, with a view to its publication in draft form, along with explanatory material, in conjunction with the publication of the Bill at (i) above for the purpose of informing public debate on the Referendum proposal.

**Background**

2. At its meeting on 17 February 2004, the Government had before it a proposal to prepare the scheme of a Referendum Bill to provide for an amendment to the Constitution to deal with the impact of the right to Irish citizenship based solely on birth in the island of Ireland, and in addition the preparation of a Scheme of an implementing Irish Nationality and Citizenship Bill to give effect to the proposed Constitutional amendment. Those Schemes are now attached for Government approval.

**Referendum Bill**

3. While the Scheme of the Bill to amend the Constitution is based on the draft text indicated in the Memorandum considered by the Government at its meeting on 17 February, it raises the possibility that more detail might be included in the proposal to be put to the people. The Minister sees advantage in a text which would contain some guiding principles as to the lines on which that legislation should be prepared. The proposal is that the drafting of this Bill and of the implementing Bill (see below) would proceed in tandem so as to take this possibility into account.

**Implementing Bill**

4. The Scheme of a draft implementing Bill is attached at Appendix 2. The principal feature of that Bill is at Head 1, which sets out the limitations proposed on the entitlement to Irish citizenship of children born in Ireland to parents neither of whom was Irish at the time of the birth. The Head proposes that there should be a qualifying period of lawful residence in the State prior to the birth: that period would be 3 years lawful residence in the State immediately preceding the birth. Special provision is also made for the situation where a parent predeceases the birth but would have had the requisite period of lawful residence in the State had he or she been alive at the time of the birth. Special provision is also made for the acceptance of a declaration in lieu of official immigration records of presence in the State for UK citizens or other EEA nationals who are in Ireland on foot of EU Treaty rights and who are not obliged by Irish law to register with the Garda Síochána.

5. The Minister draws attention to the fact that, under this proposal, a child born in Northern Ireland to parents neither of whom was Irish or entitled to be Irish would not acquire an entitlement to be an Irish citizen. While such parents might well be lawfully in Northern Ireland by reference to UK immigration law, the Minister considers it wrong in principle that a provision of Irish citizenship law might depend on compliance by the parents with the law of a foreign state. That said, he recognises that this issue may well give rise to difficulties. He proposes to work closely with the Attorney General and with the Minister for Foreign Affairs during the drafting process to ensure that any such potential difficulties are avoided or minimised.
6. The Scheme also contains, at Head 2, a proposal to limit the scope of the present section 13 of the 1956 Act, which treats persons born on Irish-registered ships and aircraft as if they were born in Ireland. This has the effect at present that all such children are entitled to be Irish citizens. The Head proposes instead that only children born on Irish craft who would otherwise be stateless will acquire Irish citizenship.
7. The opportunity can be taken in this Bill to address the substance of the Private Member's Bill tabled by Senator Fergal Quinn in October 2003, the aim of which was to put beyond possibility the re-institution of an investment-based citizenship scheme. The Government, at its meeting of 21 October 2003, accepted the Minister's proposal that that Bill be supported in principle at Second Stage and that the Government would at a suitable opportunity bring forward its own proposal to achieve the Senator's aim.

#### **Publication strategy**

8. The Minister proposes that at the same time as the Amendment of the Constitution Bill is published, an explanatory booklet would also be produced including the text of the proposed implementing Bill and also possibly the text of the Irish Nationality and Citizenship Act 1956 as it would read following amendment by the implementing Bill, and accompanied by detailed explanatory notes on the proposal. The aim of this publication would be to ensure public awareness of the precise nature of the proposal and to inform public debate at the earliest possible point in the process. This is in line with the approach taken in recent referenda.

#### **Consultation with other Departments**

9. The drafting process will allow the opportunity for suitable consultation with interested Departments, the fruits of which will be incorporated in the Memorandum seeking approval to the drafted texts of the Bills when complete.

7

Do Thag/Your Ref :  
Ár dTag/Our Ref :

To: CN=Michael R. Gleeson/O=JUSTICE@JUSTICE

From: CN=Brian F. Ingoldsby/O=JUSTICE

CC:

BCC:

Date: 12/03/2004 12:17:32

Subject: Material for Minister's SunTimes article

One last look over this revised version please.

Brian

----- Forwarded by Brian F. Ingoldsby/JUSTICE on 12/03/2004 12:25 -----

**Proposed citizenship referendum:  
Material for Minister's Sunday Times article**

When I announced on Wednesday last the Government's proposals for a referendum to deal with the impact, as experienced to date, of the universal entitlement for those born in Ireland to claim Irish citizenship, I was confident that it would provoke public debate. The purpose of this article is to try and ensure that the debate (now well under way) proceeds on the basis of a true understanding of the facts and a clear public awareness of what is proposed—and, indeed, of what is *not* being proposed.

The Programme for Government, agreed when we were elected to office in 2002, contained a commitment to institute all-party discussions focusing on the possible need for constitutional or other measures which might be required to address the issue of the number of applications to remain in the State being made by non-national parents of children born in the State. The commitment was in the context of two important features of Irish law: first, the entitlement derived from Article 2 of the Constitution, of those born in Ireland to be Irish citizens; and second, the apparently strong legal claim on the part of non-national parents of a child born here to be permitted themselves to remain in the State, based on what was understood to be the effect of the Supreme Court's decision in the 1991 *Fajjionu* case.

Of course, this second feature altered dramatically in 2003 when the Supreme Court delivered its judgment in the *L and O* case, involving the proposed deportation of the parents and families of two children born in Ireland. The Court made clear that the factors to be taken into account in deciding whether or not the parents should be deported went beyond the birth alone - the length of stay of the families and their circumstances and the general requirements of the common good were also relevant. In other words, the Minister could after due consideration of the issues in each case decide that the parents should be deported. That due consideration is under way at the moment in relation to over 8,000 non-national parents of Irish-born children: it is a careful and painstaking statutory process which gives each person the opportunity to make representations as to why they should not be deported. My Department has taken on extra staff on a temporary basis to deal with those cases each on its own merits.

The thirteen months or so since that judgment have shown, however, that there has been no significant diminution in the numbers arriving heavily pregnant. This is a significant cause for concern in a number of respects. Our maternity services come under pressure because they have to deal at short notice with women who may have communications difficulties, about whom no previous history of the pregnancy or of the mother's health is known, and who in about half of the cases of first arrival (according to the Master of the Rotunda, Dr Michael Geary, as interviewed on RTÉ during the week) are already at or near labour. The hospitals cannot predict the demand on resources from month to month, and all the resources in the world would be of no use in dealing with suddenly-presenting crisis pregnancies. Most importantly, it is clear that women are putting their own health and the lives of their unborn children at risk by undertaking journeys from abroad in late pregnancy.

We must ask ourselves why this is. The inescapable conclusion is that non-national parents, whether based in Ireland or not, perceive that there is an advantage to be gained by giving birth in Ireland to a child who thereby becomes an Irish, and thus an EU, citizen. And this is a phenomenon not experienced in other EU States: the equally inescapable conclusion is that

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Material for Ministers Sunday Times article.doc

**Proposed citizenship referendum:**  
**Material for Minister's Sunday Times article**

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The thirteen months or so since that judgment have shown, however, that there has been no significant diminution in the numbers arriving heavily pregnant. This is a significant cause for concern in a number of respects. Our maternity services come under pressure because they have to deal at short notice with women who may have communications difficulties, about whom no previous history of the pregnancy or of the mother's health is known, and who in about half of the cases of first arrival (according to the Master of the Rotunda, Dr Michael Geary, as interviewed on RTÉ during the week) are already at or near labour. The hospitals cannot predict the demand on resources from month to month, and all the resources in the world would be of no use in dealing with suddenly-presenting crisis pregnancies. Most importantly, it is clear that women are putting their own health and the lives of their unborn children at risk by undertaking journeys from abroad in late pregnancy.

We must ask ourselves why this is. The inescapable conclusion is that non-national parents, whether based in Ireland or not, perceive that there is an advantage to be gained by giving birth in Ireland to a child who thereby becomes an Irish, and thus an EU, citizen. And this is a phenomenon not experienced in other EU States: the equally inescapable conclusion is that this is because no other EU state has citizenship laws that operate in the absolute way that Irish law does as regards birth on their territory.

It is an obvious feature of the human condition that people will have children. This applies both to citizens and members of our settled immigrant community alike. It can also arise that visitors to our shores may through *force majeure* happen to have children while in the State. Public policy must of course recognise the reality of these situations. However public policy must also take account of cases where birth in Ireland is not a mere consequence of the mother's presence in the State at a particular point in time—but is in fact the main reason for such presence.

What solutions are available? We cannot deal with this by immigration controls: to require non-national women of child-bearing age to make declarations of pregnancy or otherwise when arriving in the State is clearly preposterous. We have a responsibility under the Refugee Convention anyway to admit to our territory anyone who claims that they are in fear of persecution, whether or not they are pregnant women (though there is a growing trend for expectant non-national mothers not to seek asylum).

No, the Government is convinced that in order to discourage women from putting themselves at risk (or being put under pressure by their partners or others to take that risk) by undertaking hazardous journeys late on in pregnancy, we must address the lure that induces them to make the journey in the first place. I consulted with the Attorney General to see whether we could solve this by bringing forward a suitable Act of Parliament, but his firm advice concurred with my own view: that any such Act would be inconsistent with the Constitution as it now stands. That is why we have decided to put a proposition to the people to amend the Constitution.

The wording of the proposed amendment is being worked out, as is the detail of the legislation which will give effect to it once the people have spoken, and I welcome all reasonable suggestions from whatever quarter as to what the final form might be. But I can guarantee certain things about this proposal. The first is that it will not be the case that the health of any pregnant non-national mother or her unborn child will be put at risk as a result; in fact the opposite will be the case. The proposal will not deprive anyone who already has an entitlement to be an Irish citizen of that entitlement. It will not be racist: it will apply even-handedly to the children of all non-nationals irrespective of colour, ethnicity or any other criterion on which racism is based. It will be based on a reasonably substantial period of lawful residence in the State on the part of at least one of the non-national parents. It will be at least as generous as the citizenship laws of any of our European Union colleagues as regards children born to non-nationals (compare, for instance, a child born to non-nationals in the UK: that child is not a UK citizen unless at least one of the parents has at the time of the birth permission to remain in that jurisdiction without condition as to time, a permission not generally granted unless the non-national has been resident for at least xx years). It will be clear and transparent in its operation, and won't involve the exercise of Ministerial discretion. It won't affect the citizenship entitlements of a child at least one of whose parents is Irish or entitled to be an Irish citizen. A draft of the proposed implementing Bill will be published in an explanatory document at the same time as the text of the Bill to amend the Constitution.

I look forward to suggestions and constructive comment as we work out the details; and the Government will make a calm and rational decision as to when the referendum will be conducted. Two obvious possible options are to make use of the polling day already fixed for the European Parliament and local authority elections, on 11 June next, and to run it in conjunction with the presidential election next November. Either way, however, I can reiterate now that the Government campaign in support of the proposal will not be racist because the proposal itself will not be racist. I won't allow the proposal to be hijacked by those who wish to further a racist agenda; but equally I will be harsh in my criticism of those

on the other end of the political spectrum who claim to see racism in any action, however rational, fair-minded or soundly based, that impinges on immigration or citizenship policy, and who thereby play into the hands of those who really are racist.

I take this opportunity to remind people again that most of the non-nationals living in Ireland are people who have come here properly documented and who are sharing in and contributing to Ireland's economic success. We're delighted to have them here, to welcome them and to help them establish themselves permanently here if that's what they want. This proposal will ensure that children born to those who have settled here for a reasonable number of years will have an entitlement to Irish citizenship, as much in acknowledgment of the fact that the family has settled into Irish society as for any other reason.

The complete text of the document used to inform the all-party discussions is at [www.justice.ie](http://www.justice.ie).

Do Thag/Your Ref :  
Ár dTag/Our Ref :

To: CN=Brian F. Ingoldsby/O=JUSTICE@JUSTICE  
From: CN=Michael R. Gleeson/O=JUSTICE  
CC:  
BCC:  
Date: 12/03/2004 10:14:09  
  
Subject: SUNDAY TIMES WITH MG AMDS

----- Forwarded by Michael R. Gleeson/JUSTICE on 12/03/2004 09:28 -----

Sent to

**Proposed citizenship referendum:**  
**Material for Minister's Sunday Times article**

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The Programme for Government, agreed when we were elected to office in 2002, contained a commitment to institute all-party discussions focusing on the possible need for constitutional or other measures which might be required to address the issue of the number of applications to remain in the State being made by non-national parents of children born in the State. This commitment was in the context of two important features of Irish law: first, the entitlement derived from Article 2 of the Constitution, of those born in Ireland to be Irish citizens; and second, the apparently strong legal claim on the part of non-national parents of a child born here to be permitted themselves to remain in the State, based on what was understood to be the effect of the Supreme Court's decision in the 1991 *Fajujonu* case.

Of course, this second feature altered dramatically in 2003 when the Supreme Court delivered its judgment in the *L and O* case, involving the proposed deportation of the parents and families of two children born in Ireland. The Court *made clear that the factors to be taken into account in deciding whether or not the parents should be deported went beyond the birth alone - the length of stay of the families and their circumstances and the general requirements of the common good were also relevant. the claims to remain in the State made by the parents of the Irish citizen children in question were not strong, and that the*. In other words the Minister could after due consideration of the issues in each case decide that the parents should be deported. That due consideration is under way at the moment in relation over 8,000 non-national parents of Irish-born children: it is a careful and painstaking statutory process which gives each person the opportunity to make representations as to whether they should not be deported. My Department has taken on extra staff on a temporary basis to deal with those cases each on its own merits.

~~Another possible effect of the 2002 judgment was foreseen: that the numbers of non-national women arriving in the State in an advanced state of pregnancy, which had been running at a relatively high level, would begin to fall off.~~ The thirteen months or so since that judgment have shown, however, that there has been no significant diminution in the numbers arriving heavily pregnant. This is a significant cause for concern in a number of respects. Our maternity services come under pressure because they have to deal at short notice with women who may have communications difficulties, about whom no previous history of the pregnancy or of the mother's health is known, and who in about half of the cases of first arrival (according to the Master of the Rotunda, Dr Michael Geary, as interviewed on RTÉ during the week) are already at or near labour. The hospitals cannot predict the demand on resources from month to month, and all the resources in the world would be of no use in dealing with suddenly-presenting crisis pregnancies. Most importantly, it is clear that women are putting their own health and the lives of their unborn children at risk by undertaking journeys from abroad in late pregnancy.

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SUNDAY TIMES WITH MG AMDS.doc

**Proposed citizenship referendum:**  
**Material for Minister's Sunday Times article**

When I announced on Wednesday last the Government's proposals for a referendum to deal with the impact, as experienced to date, of the universal entitlement for those born in Ireland to claim Irish citizenship, I was confident that it would provoke public debate. The purpose of this article is to try and ensure that the debate (now well under way) proceeds on the basis of a true understanding of the facts and a clear public awareness of what is proposed—and, indeed, of what is *not* being proposed.

The Programme for Government, agreed when we were elected to office in 2002, contained a commitment to institute all-party discussions focusing on the possible need for constitutional or other measures which might be required to address the issue of the number of applications to remain in the State being made by non-national parents of children born in the State. That commitment was in the context of two important features of Irish law: first, the entitlement, derived from Article 2 of the Constitution, of those born in Ireland to be Irish citizens; and second, the apparently strong legal claim on the part of non-national parents of a child born here to be permitted themselves to remain in the State, based on what was understood to be the effect of the Supreme Court's decision in the 1991 *Fajujonu* case.

Of course, this second feature altered dramatically in 2003 when the Supreme Court delivered its judgment in the *L and O* case, involving the proposed deportation of the parents and families of two children born in Ireland. The Court *made clear that the factors to be taken into account in deciding whether or not the parents should be deported went beyond the birth alone - the length of stay of the families and their circumstances and the general requirements of the common good were also relevant. the claims to remain in the State made by the parents of the Irish citizen children in question were not strong, and that the*. In other words the Minister could after due consideration of the issues in each case decide that the parents should be deported. That due consideration is under way at the moment in relation to over 8,000 non-national parents of Irish-born children: it is a careful and painstaking statutory process which gives each person the opportunity to make representations as to why they should not be deported. My Department has taken on extra staff on a temporary basis to deal with those cases each on its own merits.

~~Another possible effect of the 2002 judgment was foreseen: that the numbers of non-national women arriving in the State in an advanced state of pregnancy, which had been running at a relatively high level, would begin to fall off.~~ The thirteen months or so since that judgment have shown, however, that there has been no significant diminution in the numbers arriving heavily pregnant. This is a significant cause for concern in a number of respects. Our maternity services come under pressure because they have to deal at short notice with women who may have communications difficulties, about whom no previous history of the pregnancy or of the mother's health is known, and who in about half of the cases of first arrival (according to the Master of the Rotunda, Dr Michael Geary, as interviewed on RTÉ during the week) are already at or near labour. The hospitals cannot predict the demand on resources from month to month, and all the resources in the world would be of no use in dealing with suddenly-presenting crisis pregnancies. Most importantly, it is clear that women are putting their own health and the lives of their unborn children at risk by undertaking journeys from abroad in late pregnancy.

We must ask ourselves why this is. The inescapable conclusion is that *non national parents who are not themselves Irish, whether based in Ireland or not*, perceive that there is an advantage to be gained by giving birth in Ireland to a child who thereby becomes an Irish,

and thus an EU, citizen. ~~And this~~ *This* is a phenomenon not experienced in other EU States: the ~~equally~~ inescapable conclusion is that this is because no other EU state has citizenship laws that operate in the absolute way that Irish law does as regards birth on their territory.

*It is of course an obvious feature of the human condition that people will have children. This applies both to citizens and members of our settled immigrant community alike. It can also arise that visitors to our shores may through force majeure happen to have children while in the State. Public policy must of course recognise the reality of these situations. However public policy must also take account of cases where birth in Ireland is not a mere consequence of the mother's presence in the State at a particular period in time - but is in fact the main reason for such presence.*

What solutions are available? We cannot deal with this by immigration controls: to require non-national women of child-bearing age to make declarations of pregnancy or otherwise when arriving in the State is clearly as preposterous as it would be impractical; to ~~refuse permission to enter to those who look as if they might be pregnant~~ equally so. We have a responsibility under the Refugee Convention anyway to admit to our territory anyone who claims that they are in fear of persecution, whether or not they are pregnant women (though there is a growing trend for expectant non-national mothers not to seek asylum).

No, the Government is convinced that in order to discourage women from putting themselves at risk (or being put under pressure by their partners or others to take that risk) by undertaking hazardous journeys late on in pregnancy, we must address the lure that induces them to make the journey in the first place. That is why we have decided to put a proposition to the people to amend our Constitution.

The wording of the proposed amendment is being worked out, as is the detail of the legislation which will give effect to it once the people have spoken, and I welcome all reasonable suggestions from whatever quarter as to what the final form might be. But I can guarantee certain things about it. *The first is that it will not be the case that the health of any pregnant non national mother or her unborn child will be put at risk as a result of these proposals. In fact the opposite will be the case.* It will not deprive anyone who already has an entitlement to be an Irish citizen of that entitlement. It will not be racist: it will apply even-handedly to the children of all non-nationals irrespective of colour, ethnicity or any other criterion on which racism is based. It will be based on a reasonably substantial period of lawful residence in the State on the part of at least one of the non-national parents. It will be at least as generous as the citizenship laws of any of our European Union colleagues as regards children born to non-nationals (compare, for instance, a child born to non-nationals in the UK: ~~that child does not derive citizenship by virtue of the birth alone is not a UK citizen unless at least one of the parents has at the time of the birth permission to remain in that jurisdiction without condition as to time, a permission not generally granted unless the non-national has been resident for at least xx years~~). It will be clear and transparent in its operation, and won't involve the exercise of Ministerial discretion. It won't affect the citizenship entitlements of a child at least one of whose parents is Irish or entitled to be an Irish citizen. A draft of the proposed implementing Bill will be published in an explanatory document at the same time as the text of the Bill to amend the Constitution.

I look forward to suggestions and constructive comment as we work out the details; and the Government will make a calm and rational decision as to when the referendum will be conducted. Two obvious possible options are to make use of the polling day already fixed for the European Parliament and local authority elections, on 11 June next, and to run it in conjunction with the presidential election next November. Either way, however, I can reiterate now that the Government campaign in support of the proposal will not be racist

because the proposal itself will not be racist. I won't allow the proposal to be hijacked by those who wish to further a racist agenda; but equally I will be harsh in my criticism of those on the other end of the spectrum who claim to see racism in any action, however rational, fair-minded or soundly based, that impinges on immigration or citizenship policy.

The complete text of the document used to inform the all-party discussions is at [www.justice.ie](http://www.justice.ie).



Do Thag/Your Ref :  
Ár dTag/Our Ref :

To: CN=Dermot M. Woods/O=JUSTICE@JUSTICE  
From: CN=Brian F. Ingoldsby/O=JUSTICE  
CC: CN=Cronan M. Goodman/O=JUSTICE@JUSTICE  
BCC:  
Date: 31/03/2004 12:36:32  
  
Subject: Summary of citizenship proposals

Rúnaí Aire

Mr Browne, Asst Sec, Civil Law Reform Division, has suggested that I forward for the Minister's information a short synopsis of the citizenship proposals as they currently stand. This synopsis has been supplied to DFA and is in two forms. The first is in the form of explanatory material and the second is in a form suitable for incorporation in a request to the British authorities for an interpretive declaration (or such other suitable document as DFA determine in consultation with the AG). DFA are proceeding with this course.

Forwarded separately is the latest version of the Scheme of the implementing Bill as transmitted to Parliamentary Counsel. Texts of this Bill and of the Amendment of the Constitution Bill are in the process of being drafted. Parliamentary Counsel, the AG and DFA are all aware of the need to have texts for approval by Government at its meeting on Tuesday next. Consultations are ongoing.

Brian Ingoldsby  
Civil Law Reform Division

cc Secretary General

----- Forwarded by Brian F. Ingoldsby/JUSTICE on 31/03/2004 12:28 -----



**RESPONSE DOCUMENT**

## **Proposed citizenship referendum Summary of implementing proposals**

The principal aim of the implementing Bill is to address the entitlement to Irish citizenship persons born in the island of Ireland, its islands and its seas to non-nationals (i.e. those who are not Irish citizens and who do not themselves have an entitlement to Irish citizenship).

The proposal has three features:

- A person born whether north or south to parents one of whom is a British citizen or has entitlement to reside in the UK (and thus in Northern Ireland) without any restriction on his or her period of residence will be entitled to Irish citizenship.<sup>1</sup>
- A person born whether north or south to parents one of whom has an entitlement or permission to reside in the State without any restriction on his or her period of residence will be entitled to Irish citizenship.<sup>2</sup>
- A child born whether north or south to non-national parents either of whom has been lawfully resident in the State for at least three out of the four years preceding the birth will have an entitlement to Irish citizenship.<sup>3</sup>

The proposal to amend the Constitution will be framed in terms at least sufficient to permit the bringing forward of this legislation. The extent if any to which the detail of the implementing proposal would be reflected in the text to appear in the Constitution is a matter for determination.

*Department of Justice, Equality and Law Reform  
30 March 2004*

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<sup>1</sup> This derives, as to such persons born in Northern Ireland, from Article 1(vi) of and Annex 2 to the British-Irish Agreement; as to those born in the State, the proposal secures the entitlement to Irish citizenship e.g. the child born fortuitously in the State to parents who are resident in Northern Ireland. It goes further, however, in that it confers the entitlement to Irish citizenship on those born in the State to a British parent whether or not that parent ever resided in the North.

<sup>2</sup> This is by analogy with Article 1(vi) of and Annex 2 to the British-Irish Agreement.

<sup>3</sup> For non-EEA national parents periods spent in the State for study purposes or while awaiting the

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<sup>3</sup> For non-EEA national parents, periods spent in the State for study purposes or while awaiting the determination of an asylum claim will not count.



Summary of Citizenship Proposals.doc

## **Proposed citizenship referendum Summary of implementing proposals**

The principal aim of the implementing Bill is to address the entitlement to Irish citizenship of persons born in the island of Ireland, its islands and its seas to non-nationals (i.e. those who are not Irish citizens and who do not themselves have an entitlement to Irish citizenship).

The proposal has three features:

- A person born whether north or south to parents one of whom is a British citizen or has an entitlement to reside in the UK (and thus in Northern Ireland) without any restriction on his or her period of residence will be entitled to Irish citizenship.<sup>1</sup>
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The proposal to amend the Constitution will be framed in terms at least sufficient to permit the bringing forward of this legislation. The extent if any to which the detail of the implementing proposal would be reflected in the text to appear in the Constitution is a matter for determination.

*Department of Justice, Equality and Law Reform  
30 March 2004*

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<sup>3</sup> <sup>3</sup>For non-EEA national parents, periods spent in the State for study purposes or while awaiting the determination of an asylum claim will not count.

## **Proposed citizenship referendum**

### **Summary of implementing proposals**

The principal aim of the implementing Bill is to address the entitlement to Irish citizenship of persons born in the island of Ireland, its islands and its seas to non-nationals (i.e. those who are not Irish citizens and who do not themselves have an entitlement to Irish citizenship). At present, by operation of Irish citizenship law, all persons born in the island of Ireland, its islands and its seas are entitled to Irish citizenship.

In summary, the Bill to implement the proposed constitutional amendment will exclude from that general entitlement all persons born to non-national parents in Ireland after the commencement of the implementing legislation except the following:

- persons one of whose parents is a British citizen at the time of the birth;
- persons one of whose parents has at the time of the birth an entitlement to reside in either the State or Northern Ireland without restriction as to his or her period of residence;
- persons one of whose parents has been lawfully resident in the State for at least three out of the four years immediately preceding the birth (for a non-EEA national parent, certain restrictions will apply on the reckoning of some periods depending on the purpose of the stay).

The proposal to amend the Constitution will be framed in terms at least sufficient to permit the bringing forward of this legislation. The extent if any to which the detail of the implementing proposal would be reflected in the text to appear in the Constitution is a matter for determination.

**Oifig an Aire Dlí agus Cirt, Comhionnanais agus Athchóirithe Dlí: Office of the  
Minister for Justice, Equality and Law Reform**

5 April 2004

**Proposed Referendum on the citizenship rights of children born in Ireland to  
non-national parents**

**Decision sought**

1. The Minister for Justice, Equality and Law Reform asks the Government to—
  - (i) approve the text of the Bill to amend the Constitution (Appendix 1), and (subject to the agreement referred to at (iii) below) its initiation in the Dáil and circulation to Deputies;
  - (ii) approve the text of the draft implementing Bill (Appendix 2), subject to any technical or textual changes that may be agreed between the Minister and the Attorney General, and (subject to the agreement referred to at (iii) below) its publication in draft form, along with explanatory material, in conjunction with the publication of the Bill at (i) above for the purpose of informing public debate on the Referendum proposal;
  - (iii) note the steps to be taken by the Minister for Foreign Affairs (detailed at paragraphs 5.1 to 5.4 below) to secure the agreement of the British authorities that the proposal to amend Article 9 of the Constitution is in accordance with the intention of the two Governments in making the 1998 British-Irish Agreement
  - (iv) approve the announcement of its intention to hold the Referendum arising out of the Bill at (i) above on 11 June 2004 along with the local Government and European Parliament elections;
  - (v) approve the establishment of a Referendum Commission, on foot of an order to that effect to be made by the Minister for the Environment, Heritage and Local Government on publication of the Bill at (i) above, with a budget of €4m.
  - (vi) approve the tabling of a Government amendment to the Seanad opposition motion scheduled for debate on Wednesday 7 April on the lines set out in Appendix 6.

**Background**

2. At its meeting on 9 March 2004, the Government approved the drafting of a Bill to provide for an amendment to the Constitution to deal with the impact of the right to Irish citizenship based solely on birth in the island of Ireland, and in addition the drafting of an implementing Irish Nationality and Citizenship Bill to give effect to the proposed Constitutional amendment, both on foot of Schemes approved by Government on that occasion.

**Referendum Bill**

- 3.1 The text of the Bill to amend the Constitution provides for the amendment of Article 9 by the insertion of the following words:

2. Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and its seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be

an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.

<sup>20</sup> This section shall not apply to persons born before the date of the enactment of this section.

While it differs from the draft text contained in the Scheme approved by Government, the differences are textual only and do not affect the substance of the proposal.

3.2 Consideration has been given in the drafting process by the Minister as to whether a measure of detail (e.g. a reference to the 3-year residence requirement in the draft implementing Bill) could be included in the text of the Constitutional amendment; but the complexity is such that it has been found not possible to take that approach.

#### **Draft Implementing Bill**

4.1 The draft implementing Bill is based substantially on the Scheme approved by Government, but differs from it in the following respect. The Scheme provided that an entitlement to Irish citizenship would arise for persons born to non-national parents who had a minimum period of lawful residence in the State at the time of the birth; thus the child of non-national parents lawfully resident in Northern Ireland would not acquire that entitlement. The Attorney General (Appendix 3) has advised that under the British-Irish Agreement, persons born in Northern Ireland to British citizens or to non-nationals with an entitlement to reside in Northern Ireland without restriction as to their period of residence there are entitled to be British citizens or Irish citizens or both as they choose, and that the Bill must provide accordingly. To take account of the fact that a provision which went no further than this would mean that the child born in the State to a non-national parent who had an entitlement to live in Northern Ireland without restriction on the period of residence would not have an entitlement to Irish citizenship. Accordingly the Bill provides that a person born anywhere in Ireland to a parent who is a British national or is a non-national with an entitlement to reside in Northern Ireland or the State without restriction as to the period of residence has an entitlement to Irish citizenship.

4.2 In addition, the Minister has consulted with the Minister for Foreign Affairs and the Attorney General as to whether lawful residence by a non-national in Northern Ireland for aggregate periods totalling three years should qualify that person's child born in the island of Ireland for Irish citizenship, analogous to the provisions in the implementing Bill creating a qualifying requirement of lawful residence in the State. There could be administrative difficulties in establishing in particular cases whether or not a non-national was in fact resident in Northern Ireland in conformity with UK immigration law for the requisite period of qualifying residence. The Attorney General (advice on this issue at Appendix 4) is not sure that the administrative inconvenience involved is sufficient to outweigh the other considerations set out in that Appendix.

4.3 The Minister for Foreign Affairs is of the view—on the basis of equality of treatment as between persons born to families resident in the North and in the South—that the three-year residence requirement should apply also in respect of residence in Northern Ireland that meets criteria similar to those applying to residence in the State. The Minister accepts this. Suitable amendments to the text of the draft implementing Bill are in course of preparation, and the proposal is that they will be incorporated in the text of that draft Bill when published.

### **British-Irish dimension**

- 5.1 The Attorney General's advice at Appendix 3 also addresses the relationship between the present proposal and the British-Irish Agreement. In essence, the present text of Article 2 of the Irish Constitution, which gives every person born in the island of Ireland "the entitlement and birthright to be part of the Irish nation," is contained in the Multi-Party Agreement which forms Annex 1 of the British-Irish Agreement. It was one of the pre-conditions for the coming into operation of the British-Irish Agreement that the new Article 2 have been incorporated in the Irish Constitution. The Attorney General points to the asymmetry between the universal application of the wording of Article 2 and the more restrictive recognition as the people of Northern Ireland given by Annex 2 of the British-Irish Agreement, which (in combination with Article 1(vi) of that Agreement) acknowledges the right to be recognised as British, or Irish, or both of persons born in Northern Ireland and having at the time of their birth one parent who is British or Irish or is a non-national entitled to reside in Northern Ireland without restriction as to the period of residence there. The net effect of this latter provision is that under the British-Irish Agreement not everyone born in Northern Ireland is entitled to be a British citizen or an Irish citizen but, by operation of Article 2 of the Constitution, every such person is entitled to be part of the Irish nation (which the Supreme Court has held includes an entitlement to Irish citizenship).
- 5.2 Because on one reading of the British-Irish Agreement and the Multi-Party Agreement as a whole the present proposal could be seen as a unilateral variation of the British-Irish Agreement, the Attorney has advised that it is necessary to seek the advance agreement of the British authorities that the proposal is not regarded as such by them.
- 5.3 The British authorities will accordingly be approached through the Department of Foreign Affairs to secure their willingness to subscribe jointly with the Irish Government to a joint interpretative declaration, the agreed draft of which is at Appendix 5.
- 5.4 It would be inappropriate to publish the Amendment of the Constitution Bill in advance of that declaration being signed.

### **Publication plans**

6. The proposal is to initiate the Amendment of the Constitution Bill in the Dáil as soon as possible, having regard to the consideration at 5.4 above. It is also proposed to prepare for publication at the same time a policy statement which will set out the background to the proposal and the Government's plans for the implementing Bill, the text of which will be included in the statement.

### **Referendum Commission**

- 7.1 Section 2 of the Referendum Act 1998 provides that the Minister for the Environment, Heritage and Local Government may by order establish a Referendum Commission whenever a Bill to amend the constitution is published. The present proposal is one eminently suited to such a Commission. The Ombudsman's Office (which provides the secretariat for such Commissions) has estimated, based on previous experience, that a budget of €4m. will be sufficient to cover the expenses involved in the preparation of publicity material and its dissemination to the public.

7.2 The Minister considers it essential that the Referendum Commission be established as soon as possible so that the necessary groundwork can be done by it in sufficient time to permit the holding of the Referendum in conjunction with the local government and European Parliament elections on 11 June 2004.

**Time-table**

8.1 The time-table at Appendix 6 is suggested for the management of the process of passage of the legislation through the Oireachtas in sufficient time for the holding of the Referendum on 11 June. Specific aspects are discussed in the following paragraphs.

8.2 While it is desirable to publish the Amendment of the Constitution Bill as early as possible, it would be inappropriate to publish it before securing the joint declaration with the British authorities referred to at paragraph 5.3 above. It would also be undesirable to publish the Amendment of the Constitution Bill on its own without at the same time publishing the draft text of the proposed implementing Bill. The policy statement (paragraph 6 above) is of a kind that must be published in both Irish and English under section 10 of the Official Languages Act 2003. While every effort is being made to secure that the publication date will be next Thursday 8 April, there may be advantages to holding off publication until the following week.

8.3 The existence in the public domain of the text of the draft implementing Bill will help to inform debate in the Oireachtas on the Amendment of the Constitution Bill, but the draft implementing Bill will not itself be the subject of debate. Given that the Amendment of the Constitution Bill is itself short and addresses a net issue, it is reasonable to expect that it will not require unduly lengthy debate in either House. The relevant elements of the suggested time-table are based on that assumption.

8.4 By section 10 of the Referendum Act 1994, the Minister for the Environment, Heritage and Local Government must make an order, following the passage through the Oireachtas of an Amendment of the Constitution Bill, specifying a polling day that is at least 30 and not more than 90 days after the making of the order. In order to secure that the present proposal can be put to the people on 11 June, then, the Bill must be passed by the Oireachtas by 12 May at the latest.

8.5 There has been considerable public commentary around the possible holding of the Referendum on the same day as the local and European elections, much of it centring on the perceived fear that to do so would encourage the development of racism and the possibility of that factor affecting the conduct if not also the outcome of the local and European elections. The Minister is of the view that it is in the nature of local elections on their own that they provide ample opportunity for the flowering of such latent racist tendencies as may already exist (as well as other minority or local issues) in Irish politics, and that the running of this Referendum proposal at the same time would make no difference in that regard. On the other hand, there is considerable expense involved in going separately to the people on a Referendum issue, and it would be imprudent to pass up the opportunity presented by the fact of the elections on 11 June to put this matter to the people at the same time. While the possibility exists of a Presidential election later in the year, which would if held offer another opportunity to put this question to the people, the same arguments against that timing are likely to be made; there is however no certainty that such an election will in fact be necessary. In all, the Minister recommends that the matter be put to the people on 11 June.

**Seanad motion**

9. Opposition senators have tabled a motion in the terms set out at Appendix 7. It is scheduled for debate on Wednesday 7 April. The Minister considers that the appropriate tactic for addressing the motion is for the Government side to propose an amendment to it, a suggested text of which also appears at Appendix 7.

**Consultation with other Departments**

10. The proposals in the Amendment of the Constitution Bill and the draft implementing Bill have been drawn up in close consultation with the Office of the Attorney General (whose advices are attached at Appendices 3 and 4) and the Department of Foreign Affairs.

## Appendix 1

### **Department of Justice, Equality and Law Reform** **NOTICE TO NON-NATIONAL PARENTS OF IRISH BORN CHILDREN.**

*This Notice contains important information for the non-national parents of Irish born children, who have made applications to reside in the State on the basis of parentage of an Irish born child, and who have not received a decision.*

*The contents of this Notice do not affect those parents who have already been granted residence in the State on the basis of parentage of an Irish born child.*

Following the decision of the Supreme Court in the cases of *L & O*, the separate process which existed to enable persons to apply to reside in the State on the basis of parentage of an Irish born child was ended on 19 February 2003. The Government has decided that the separate process will also cease in cases which were outstanding on 19 February 2003 - that is cases where applications were lodged but where no decision had been made.

The Government is concerned at the number of outstanding claims to reside in the State on the basis of parentage of an Irish born child (over 11,000), and the implications which this situation has for the effectiveness and integrity of the State's asylum and immigration systems. Every such case will be examined individually and decided individually.

If the Minister proposes to deport a person affected by the Government's decision, that person will be given an opportunity to make representations in relation to the Minister's proposal, and the range of factors relevant under existing law to the Minister's determination will be taken into account in making a decision in every such case. Those factors include the person's individual family and domestic circumstances and humanitarian considerations. They also include circumstances relating to the common good which reflect the Government's serious concern at the number of claims to reside in the State on the basis of parentage of an Irish born child and the consequences of that situation.

If any person otherwise liable to deportation wishes to leave the State voluntarily, the Minister will provide assistance instead.

Any person affected by this notice who wishes to make enquiries in relation to other aspects of this notice or to discuss the possibility of voluntary return to their country of origin, is invited to telephone the Immigration and Citizenship Division at

LO-CALL TELEPHONE NO 1890 457 032

*Department of Justice, Equality and Law Reform, July 2003*

## Appendix 2

### Data in relation to permission to remain in the State on the basis of an Irish born child

#### 1) Applications for leave to remain on the basis of having an Irish born child from current and former asylum seekers

##### *1.1 Applications received by month:*

A table of applications received from current and former asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2001	416	161	354	316	517	403	500	655	634	547	744	677	5924
2002	936	625	421	577	621	429	419	594	409	559	542	417	6549
2003	721	261	0*	0*									

\*NA = none accepted

At 30 April 2003, there were 9613 applications on hand from current and former asylum seekers.

##### *1.2 Comparison of asylum applications with asylum Irish born child applications:*

In the year 2002, 6,549 applications for leave to remain were received - over 545 per month. When compared with the figure for all asylum applications in the same period, 11,634, Irish born child applications from current or former asylum seekers were running at 56% of the level of asylum applications.

##### *1.3 Withdrawals from the asylum system:*

The number of withdrawals from the asylum process on the basis of having a claim for leave to remain as the parent of an Irish born child averaged 332 cases per month during 2001. This rose to an average of 469 cases per month in 2002 with 5,622 persons withdrawing. This represented almost half of the average number of applications per month.

##### *1.4 Re-entry to the asylum system:*

Since the Supreme Court decision of 23 January 2003 in the case of *L and O*, persons who had previously withdrawn their application for asylum in order to apply for permission to remain as a parent of an Irish born child have sought to re enter the asylum system. In March, April and May 2003, there were 58, 31 and 28 such applicants respectively.

#### 2) Applications for leave to remain on the basis of having an Irish born child from persons other than asylum seekers

##### *2.1 Applications received by month:*

A table of applications received from persons other than asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2001	-	-	92	54	76	55	62	85	17	65	70	70	646
2002	165	140	138	150	201	149	162	219	166	217	218	146	2071
2003	324	127	0*	0*									

\*NA = none accepted

The increase in applications over the last year reflects the increasing numbers of non-nationals legally resident in the State. At 30 April 2003, there were 1860 such applications on hand.

### 3) Miscellaneous information

#### 3.1 Pregnant asylum applicants

Information made available to the Office of the Refugee Applications Commissioner indicates that over the past year the number of asylum seekers pregnant at the time of application was around 58% of the number of female asylum seekers aged 16 years and over. See figures below.

#### Figures for Pregnant Female Asylum Seekers

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2002:</b>						
March	932	476	384	179	38%	47%
April	888	464	384	224	48%	58%
May	795	411	346	203	49%	59%
June	869	423	339	198	47%	58%
July	1133	557	454	249	45%	55%
August	995	523	414	254	49%	61%
September	1199	603	483	243	40%	50%
October	1148	582	466	280	48%	60%
November	984	515	403	261	51%	65%
December	1090	563	457	312	55%	68%
<b>Total - Mar/Dec '02</b>	<b>10033</b>	<b>5117</b>	<b>4130</b>	<b>2403</b>	<b>47%</b>	<b>58%</b>
<b>2003:</b>						
January	979	502	433	282	56%	65%
February	947	481	393	257	53%	65%
March	892	477	390	225	47%	58%
April	667	340	286	180	53%	63%
May	604	299	251	147	49%	59%
<b>Total - Jan/May '03</b>	<b>4089</b>	<b>2099</b>	<b>1753</b>	<b>1091</b>	<b>52%</b>	<b>62%</b>

#### 3.2 Illegal residents

Recently obtained data shows that in 2001 there were 116 cases where leave to remain was granted to illegal residents (persons who had not come through the asylum system). In 2002 there have been 201 such grants. These figures are additional to those coming through the asylum system.

#### 3.3 Births to non-nationals in the State

Statistics on the nationality of mothers of children born in the State have not been collected in a systematic way in the past. However, maternity hospitals have begun to collect such data. Data collected by the Reception and Integration Agency from the Dublin maternity hospitals recently showed that an average of **1 out of every 5 children now born in Dublin has a non-EU national mother**. It is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth.

### ***3.4 Situation in maternity hospitals***

The situation is a cause of serious concerns to the maternity hospitals, in Dublin in particular. The Masters of two of the Dublin maternity hospitals met the Minister in October 2002 and expressed their concerns at what is happening. The situation outlined by the Masters was also the subject of a report undertaken by the Reception and Integration Agency in conjunction with the Northern Area Health Board. This report cited difficulties for the Dublin maternity hospitals in relation to—

- having to deal with unpredictable workloads—many arrive as late bookings;
- dealing with persons with no medical history in the State and who arrive in late stages of pregnancy, including dealing with relatively high levels of HIV and other illnesses;
- dealing with patients with little knowledge of English and where there may also be cultural issues causing practical difficulties.

As well as the additional stress on hospital staff, these cases were also very resource intensive and were a significant additional burden on hospital resources—the National Maternity Hospital alone estimated additional costs of almost €0.5m for 2002.

In a recent representation made to the Minister, the Master of the Rotunda Hospital, Dr. Geary, expressed his growing concern about the situation.

### ***3.5 Family reunification***

In addition to persons granted leave to remain in the State as parents of an Irish born child (4,071 in 2002) there is also a growing issue in relation to requests for family reunification by family members of these people. The Department is receiving a growing number of applications from children and spouses abroad seeking to join a parent or spouse who has been granted leave to remain on the basis of parentage of an Irish born child.

# Appendix 5

15

DRAFT

## DECLARATION OF THE PARTIES TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND

Whereas an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland was done at Belfast on the 10<sup>th</sup> April 1998

Whereas the two Governments have considered Article 4(1)(b) of that Agreement and the amendments to the Constitution of Ireland set out in Annex B to the Section entitled "Constitutional Issues" of the Multi-Party Agreement and the current effects and consequences of Article 2 of the Constitution and the acquisition of rights to citizenship of children of parents without a sufficient connection with the island of Ireland.

The two Governments hereby give the following legal interpretation:

That it was not their intention in making the said Agreement that it should impose on either Government any obligation to confer nationality or citizenship on persons born in any part of the island of Ireland whose parents do not have a sufficient connection with the island of Ireland.

And therefore the two Governments declare that the proposal to amend Article 9 of the Constitution of Ireland so as to provide that a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or is entitled to be an Irish citizen, is not entitled to Irish citizenship or nationality, unless otherwise prescribed by law, is in accordance with the intention of the two Governments in making the said Agreement and that this proposed change to the Constitution is not a breach of the said Agreement or the continuing obligation of good faith in the implementation of the said Agreement.

The British Government notes that the Irish Government confirms that the rights of all persons referred to in Article 1 (vi) of, and Annex 2 to, the said Agreement will be preserved by legislation.

## Appendix 6

### Proposed Constitutional Amendment on Citizenship Suggested timetable

Step to be taken	Critical success factors	Target date
Publish text of Amendment of the Constitution Bill and policy statement with text of implementing Bill	<ul style="list-style-type: none"><li>Agreement must be secured with British authorities on draft interpretative declaration</li></ul>	15 April
Establish Referendum Commission	<ul style="list-style-type: none"><li>Minister for Environment, Heritage and Local Government cannot make establishing order until Bill initiated</li></ul>	15 April
All stages in Dáil	<ul style="list-style-type: none"><li>Dáil rises for Easter recess on 8 April until 27 April</li><li>Second Stage 27 April</li><li>Committee Stage 28 April</li><li>Report and final stages 29 April</li></ul>	29 April
All stages in Seanad	<ul style="list-style-type: none"><li>Second Stage 4 May</li><li>Committee Stage 5 May</li><li>Report and final stages 6 May</li></ul>	6 May
Question put to people	<ul style="list-style-type: none"><li>Bill must be passed by Oireachtas a minimum of 30 days before it is put to the people.</li></ul>	11 June

## Appendix 7

### SEANAD ÉIREANN

#### Fógra ar Tairiscint

#### Notice of Motion

That Seanad Éireann, noting the position of the Government that a Constitutional Referendum on the issue of limiting citizenship rights for non nationals may be held at some point and mindful of the need to have a rational debate about the matter, calls on the Government to consult in detail with all members of Oireachtas Éireann before a decision is taken on this issue and specifically believes that the June 11th date for the holding of European and local elections should not be the date for the proposed referendum.

*Senators Brian Hayes, James Bannon, Feargal Browne, Paul Bradford, Paddy Burke, Ulick Burke, Paul Coghlan, Noel Coonan, Maurice Cummins, Frank Feighan, Michael Finucane, Jim Higgins, Joe McHugh, John Phelan, Sheila Terry, Derek McDowell, Kathleen O'Meara, Michael McCarthy, Brendan Ryan, Joanna Tuffy, David Norris, Joe O'Toole, Shane Ross and Feargal Quinn*

#### Proposed Government Amendment

To delete all words after “Seanad Éireann” and to substitute the following:

“recognising that it is the firm intention of the Government to hold a Constitutional Referendum on the the universal entitlement of those born in Ireland of non-national parents to claim Irish citizenship, reminds all members of the Oireachtas of the need for rational and balanced debate—

- (i) on the requisite Amendment of the Constitution Bill in the Houses of the Oireachtas,
- (ii) on any subsequent implementing legislation in the Houses of the Oireachtas and
- (iii) during the forthcoming local and European election campaigns.”

## Information note

# Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents

## Background to Proposal

1. The Programme for Government contains the following statement:

"We will keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish-born child and initiate all-party discussions on the issue of such constitutional or other measures which might be required."

This document outlines the results of the Government's review of this matter and the details of the current proposals to address this issue.

2. The Minister and the Government has been keeping this issue under review, in particular in relation to the outcome of the Supreme Court judgement of 23 January 2003 in the cases of L&O which clarified the position of the non-national parents of Irish born children. The Government's strategy for the handling of claims for leave to remain in the State on the basis of an Irish born child in the light of the Supreme Court judgement was announced on 17 July 2003. This followed detailed consideration of the issues in the Minister's Department, discussions with the Attorney General on the legal issues and discussions with the Department of Finance on the resources issues arising.
3. The strategy confirmed that there would no longer be a separate process for considering claims from non-national parents for leave to remain in the State on the basis of the birth of a child in Ireland. Such claims would not be considered where they came from parents (including asylum seekers) who had an alternative legal basis for remaining in the State. Claims from persons who did not have a legal basis for remaining in the State would only be considered in the context of representations on a Ministerial proposal to deport them. On 18 July 2003 a notice was published setting out the details of this policy as regards those persons whose claims had not been processed to finality.

## Action on foot of Government strategy

4. Following the announcement of the Government's policy and the publication of the notice on 18 July 2003, the Department began an initial processing of claims. Between 18 July and the end of December 1108 letters were sent to persons with an alternative legal basis for remaining in the State informing them that there was no longer an "Irish born child" status and that their claims would not be considered. Some 358 letters were sent to persons without such a legal basis for residence informing them that the Minister was considering deporting them.

5. Additional staff are being provided for the implementation of the Government's strategy - 150 additional staff sanctioned by the Department of Finance are gradually being assigned by way of a levy on other Government Departments. These staff will use

accommodation in Lower Grand Canal Street.

6. The Department has also agreed a new voluntary return programme with the International Organisation for Migration (IOM) which aims to assist families where non-national parents have claims for leave to remain in the State on the basis of their parentage of an Irish born child. It will operate for a period of 6 months commencing on 1 November and there is an incentive in the form of assistance for reintegration of the families into the parents' countries of origin. This will not be a cash payment, but rather training and other assistance.

#### **Asylum Reapplications**

7. As most of the applicants for leave to remain on the basis of an Irish born child are persons who have withdrawn from the asylum system, there was an expectation that a significant number of these would seek to reapply for asylum so as to prolong their stay in the State. Between 18 July and the end of December 2003, 203 persons had reapplied for asylum having previously withdrawn because of the birth of a child in Ireland. Of these 62 were persons who had been the subject of a letter informing them that the Minister was considering deporting them. The monthly breakdown is as follows :

July (18/7 to 31/7 incl)	August	September	October	November	December
56	96	28	12	9	2

8. It is likely that, as the new staff commence processing cases, the number of reapplications will increase. Applications for leave to remain from persons with current asylum claims will not be dealt with until the asylum claim has been determined. Where refugee status is not granted, the issue of the Irish born child will be a factor in considering whether the person should be deported or granted leave to remain based on humanitarian factors.

#### **What effect has the strategy had in reducing the attraction for illegal migration?**

9. It is now over twelve months since the Supreme Court Judgement in L&O. The Minister ceased accepting new applications for leave to remain from the parents of Irish born children over eleven months ago. The strategy for the handling of the outstanding cases has been operating since the announcement of the Government decision in July. There has been a reduction in asylum applications in the period since January 2003 as set out below (figures including reapplications) :

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
988	961	903	671	604	661	647	655	611	496	395	347

10. While the outcome of the Supreme Court judgement and the implementation of the Government strategy published in July have been a significant factor in this reduction, there were several other key developments this year which also impacted on the overall reduction in asylum applicants (with a consequent carry through to the Irish born child issue). These included :

- the elimination of rent supplement for asylum seekers,

- the introduction of sanctions for the employment of illegal immigrants in the Employment Permits Act 2003 in April 2003,
- the introduction of carriers liability in September 2003,
- changes in asylum legislation such as the introduction of the "safe country of origin" concept in September 2003, and
- ongoing operational strategies in relation to illegal immigration.

The reduction in asylum numbers attributable solely to the developments on the Irish born child issue is therefore impossible to determine.

### **Current situation**

11. As regards the number of asylum applicants who arrive in the State while pregnant, the data available from the Office of the Refugee Applications Commissioner show that over the past year, the number of asylum seekers pregnant at the time of application was almost 60% of the number of female asylum seekers aged 16 years and over. Details are set out in appendix 1. The figures in relation to new applications only (excluding reapplications from persons who had withdrawn from the asylum system and subsequently reapplied) are available for only 6 months (July to December 2003). While the total number of asylum seekers has dropped, the proportion of women who are pregnant remains very high. The rate of pregnancy is largely unchanged, averaging 57% of women aged over 16 years for the 6-month period. This compares with averages of 58% in the period March-December 2002 and 61% in January-June 2003. It is clear from these figures that there has been no significant change in the situation since the Supreme Court judgement and the implementation of the Government strategy on foot of it.

12. However, recent trends have indicated that the scale of the problem is even greater outside of the asylum seeker framework, with very large numbers of non-EEA nationals now coming to Ireland to give birth. The Minister has been informed of the growing concern among health care professionals about the rate of non-nationals coming to Ireland to give birth and the strains which this is placing on services. Data supplied by the Masters of the three Dublin Maternity Hospitals show that those hospitals alone have had 2,816 births to non-nationals in the first six months of last year. The total figure for births to non-nationals for the three Dublin Maternity Hospitals for 2003 was 4,824. The percentage of such births was between 20% and 25% of the total number of births in public hospitals in the Dublin area. The Minister has been informed that this trend has not substantially abated since the Supreme Court decision in the L&O cases. When births in other hospitals, in particular, Drogheda, are taken into account, the national figures are likely to be even higher. The Dublin maternity hospitals estimate that two thirds of the births to non-nationals last year will have been to persons other than asylum seekers, many of whom follow the pattern of a very late arrival in the State to give birth.

13. There are broader, and indeed profound, implications for health and social policy in the figures mentioned above—both in terms of short-term pressure on maternity services and medical services generally and in medium- and long-term patterns of social provision and expenditure. There are also very obvious implications for the future of Irish immigration policy and for the maintenance of the integrity of Irish law on immigration and residence.

14. The Supreme Court judgement in the cases of L&O brought a valuable clarification

of the position as regards the entitlements of non-national parents of an Irish born child to remain in the State. The actions undertaken on foot of it have had some effect in lessening the attraction of illegal migration to Ireland. However, expectations that the number of non-national births in Ireland would drop significantly after L&O have not been fulfilled. Two out of three non-nationals births are to persons other than asylum seekers. The prospect of Irish citizenship (and thus EU citizenship) for children born here seems to have an attraction independent of possible parental residence.

### **The situation internationally**

15. The feature of Irish citizenship law which grants an entitlement to citizenship to all persons born on the island of Ireland is unique in the European Union, and unusual world-wide. Most other countries have laws whereby citizenship is acquired by descent from an existing citizen, with place of birth either wholly or largely irrelevant. This makes Ireland an attractive target destination for persons wishing to establish residence in the EU and with no other basis, or a less certain basis, for doing so elsewhere. All other Member States of the EU either provide citizenship to the child of a citizen or permanent resident only or else provide citizenship to a child born on its territory only after a period of residence in the state concerned and / or after attaining a certain age.

16. The most recent survey of the situation in a range of other states is contained in the recent IOM Report of an International Comparative Study of Migration Legislation and Practice, which was commissioned by this Department as part of the development of comprehensive new immigration legislation and was published in August 2002. The relevant extract from the IOM report is attached in appendix 2. It should also be noted that a number of other states have amended their law to exclude the possibility of the children of illegal immigrants obtaining citizenship by birth on the territory of the state (UK 1981, Australia 1986). It is clear from the report that within the European Union, Ireland is the only State where citizenship can be achieved primarily through birth within the State.

17. The fact remains that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other Member State of the European Union - in terms of the child's entitlement to Irish and European citizenship and the perceived benefits of this for the parents now or in the future. This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State.

### **Options for change**

18. The Government has considered two broad strategic options for changing the current situation to discourage non-nationals from having children here in the expectation of Irish citizenship (and EU citizenship) for their children : to legislate based on the current constitutional provisions; or, alternatively, to promote a constitutional referendum to allow for a significant legislative change.

### **The legislative option**

19. This option would attempt to legislate as far as possible in a manner which would exclude from automatic Irish nationality and citizenship any person who was born in Ireland to parents neither of whom was or was entitled to be an Irish citizen at the time of

the persons birth, subject to such exceptions as might be provided for in the statute (including the obligation to avoid statelessness). In view of the current constitutional provisions this option is not considered viable.

### **The Constitutional amendment option**

20. It is considered that an amendment to the Constitution is capable of addressing this issue. A range of possibilities for such change has been considered. It has been borne in mind that it would be desirable that such change should not involve a direct amendment to Article 2. The proposal therefore is to amend Article 9 of the Constitution to provide that the entitlement to Irish citizenship of children born in Ireland to non-national parents neither of whom are entitled to citizenship would be a matter to be determined in accordance with law. This would provide a firm constitutional basis for the necessary legislation.

### **Legislation to accompany constitutional change**

21. The legislation to accompany constitutional change will be carefully drafted to achieve the following aims :

- (1) restriction of the right to Irish citizenship to Irish born children whose parents are non-nationals to cases where one parent has been legally resident in Ireland for a substantial period,
- (2) entitlement to citizenship where that is necessary under international law to avoid statelessness,
- (3) to set out the manner in which the "substantial residence" period of relevant British, EU national and non EU national parents could be verified,
- (4) a partial curtailment of the existing citizenship provisions at s. 13 of the 1956 Act in relation to persons born on Irish registered vessels or aircraft wherever they may be (though a change of this nature could be brought about even in the current constitutional context)
- (5) to take the opportunity to address the substance of Senator Feargal Quinn's Private Member's Bill, the principle of which has already been accepted by Government, to address the issue of investment based naturalisation (no constitutional change needed)

Parents may of course, acting on behalf of a minor Irish born child who is not entitled to citizenship under these provisions, continue to apply for naturalisation on behalf of that child under the existing legislation.

It is intended to outline such legislative changes in the context of the referendum as has been done on other occasions.

## Appendix 1

### Data in relation to permission to remain in the State on the basis of an Irish born child

#### 1) Applications for leave to remain on the basis of having an Irish born child from current and former asylum seekers

##### *1.1 Applications received by month:*

A table of applications received from current and former asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2001	416	161	354	316	517	403	500	655	634	547	744	677	5924
2002	936	625	421	577	621	429	419	594	409	559	542	417	6549
2003	721	261	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	982

\* none accepted

At 31 December 2003, there were 8,655 applications on hand from current and former asylum seekers.

##### *1.2 Comparison of asylum applications with asylum Irish born child applications:*

In the year 2002, 6,549 applications for leave to remain were received - over 545 per month. When compared with the figure for all asylum applications in the same period, 11,634, Irish born child applications from current or former asylum seekers were running at 56% of the level of asylum applications.

The trend in asylum applications in 2003 was downwards with a 32% reduction in the number of applications in 2003 (7,939) compared to 2002 (11,634). Since January 2003, the month of the decision of the Supreme Court in the cases of L & O, there has been a steady decrease in the number of asylum applications received. While it is not possible to say that this decrease is as a direct result of the Supreme Court decision, it is reasonable to assume that it has had some impact.

##### *1.3 Withdrawals from the asylum system:*

The number of withdrawals from the asylum process on the basis of having a claim for leave to remain as the parent of an Irish born child averaged 332 cases per month during 2001. This rose to an average of 469 cases per month in 2002 with 5,622 persons withdrawing. This represented almost half of the average number of applications per month.

In 2003, the number of withdrawals from the asylum process dropped sharply, from 491 persons withdrawing in January to only 3 persons in December.

##### *1.4 Re-entry to the asylum system:*

Since the Supreme Court decision of 23 January 2003 in the case of *L and O*, persons who had previously withdrawn their application for asylum in order to apply for permission to remain as a

parent of an Irish born child have sought to re enter the asylum system and figures are set out below.

Jan (23/1 - 31/1)	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
2	14	58	32	28	11	66	96	28	12	9	2

## 2) Applications for leave to remain on the basis of having an Irish born child from persons other than asylum seekers

### 2.1 Applications received by month:

A table of applications received from persons other than asylum seekers on a monthly basis since January 2001 is shown below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
2001	-	-	92	54	76	55	62	85	17	65	70	70	646
2002	165	140	138	150	201	149	162	219	166	217	218	146	2071
2003	324	127	0*	0*	0*	0*	0*	0*	0*	0*	0*	0*	451

\* none accepted

The increase in applications over the last year reflects the increasing numbers of non-nationals legally resident in the State. At 31 December 2003, there were 916 such applications on hand.

## 3) Miscellaneous information

### 3.1 Pregnant asylum applicants

Information made available to the Office of the Refugee Applications Commissioner indicates that over the past year the number of asylum seekers pregnant at the time of application was around 58% of the number of female asylum seekers aged 16 years and over. See figures below.

### Figures for Pregnant Female Asylum Seekers

**All Applications** - new applications and applications from persons who had withdrawn from the asylum system and subsequently reapplied

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2002:</b>						
March	932	476	384	179	38%	47%
April	888	464	384	224	48%	58%
May	795	411	346	203	49%	59%
June	869	423	339	198	47%	58%
July	1133	557	454	249	45%	55%
August	995	523	414	254	49%	61%
September	1199	603	483	243	40%	50%
October	1148	582	466	280	48%	60%
November	984	515	403	261	51%	65%

December	1090	563	457	312	55%	68%
<b>Total - Mar/Dec '02</b>	<b>10033</b>	<b>5117</b>	<b>4130</b>	<b>2403</b>	<b>47%</b>	<b>58%</b>
<b>2003:</b>						
January	979	502	433	282	56%	65%
February	947	481	393	257	53%	65%
March	892	477	390	225	47%	58%
April	667	340	286	180	53%	63%
May	604	299	251	147	49%	59%
June	661	335	275	155	46%	56%
July	647	322	256	135	42%	53%
August	655	331	271	130	39%	48%
September	611	295	234	119	40%	51%
October	496	246	194	103	42%	53%
November	395	181	152	81	45%	53%
December	347	151	135	79	52%	59%
<b>Total - Jan/Dec '03</b>	<b>7901</b>	<b>3960</b>	<b>3270</b>	<b>1893</b>	<b>48%</b>	<b>58%</b>

### New Applications only

	Total applications	Total female applications	Applications from females over 16 years	Number stated pregnancy	% total females pregnant	% females over 16 pregnant
<b>2003:</b>						
July	754	271	213	133	49%	62%
August	550	265	217	128	48%	59%
September	580	277	218	117	42%	54%
October	478	236	186	102	43%	55%
November	385	176	148	80	46%	54%
December	341	148	132	78	53%	59%
<b>Total - July/Dec '03</b>	<b>2908</b>	<b>1373</b>	<b>1114</b>	<b>638</b>	<b>46%</b>	<b>57%</b>

### **3.2 Births to non-nationals in the State**

Statistics on the nationality of mothers of children born in the State have not been collected in a systematic way in the past. However, maternity hospitals have begun to collect such data. Data collected by the Reception and Integration Agency from the Dublin maternity hospitals recently showed that an average of **1 out of every 5 children now born in Dublin has a non-EU national mother**. It is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth.

### 3.3 Situation in maternity hospitals

The situation is a cause of serious concern to the maternity hospitals, in Dublin in particular. The Masters of the Dublin maternity hospitals have repeatedly expressed their concerns at the numbers of non-national mothers giving birth in Dublin. Figures quoted for the period January to June 2003 show that of the total number of births in the Dublin maternity hospitals (11,601) some 2,816 or 24.3% were to non-national mothers. At present their major concern is the rise in births to non-national mothers other than those in the asylum system. Anecdotal evidence suggests that many women are travelling from the UK in the later stages of pregnancy. This creates difficulties for hospital staff, in particular in terms of an unpredictable workload and dealing with persons with no medical history in the State. The situation outlined by the Masters was also the subject of a report undertaken by the Reception and Integration Agency in conjunction with the Northern Area Health Board. This report cited difficulties for the Dublin maternity hospitals in relation to—

- having to deal with unpredictable workloads—many arrive as late bookings;
- dealing with persons with no medical history in the State and who arrive in late stages of pregnancy, including dealing with relatively high levels of HIV and other illnesses;
- dealing with patients with little knowledge of English and where there may also be cultural issues causing practical difficulties.

As well as the additional stress on hospital staff, these cases were also very resource intensive and were a significant additional burden on hospital resources—the National Maternity Hospital alone estimated additional costs of almost €0.5m for 2002.

## Appendix 2

### NATIONALITY

	Rights of a child born to non-nationals	Marriage between a citizen and a non-national
Australia	A child acquires Australian citizenship if one of the parents is either an Australia citizen or a permanent resident. A child born to parents illegally in the country has no claim to citizenship and may be removed with the parent/s in accordance with normal removal procedures.	A <b>Spouse Temporary Visa</b> is issued to a spouse of an Australian citizen/resident. Required conditions for acquiring this visa include minimum 12 months spouse relationship and the proof of a genuine relationship.  No preferential provision for the spouses of Australian citizen/residents for acquiring citizenship.
UK	Prior to 1 January 1983, almost every child born in the United Kingdom was a citizen of the United Kingdom and Colonies. Under the British Nationality Act 1981, a child born in the United Kingdom on or after 1 January 1983 will be a British citizen if either the father or the mother is a British citizen or is legally settled in the UK <sup>20</sup> . If neither parent is a British citizen or legally settled in the UK the child will not be a British citizen at birth.	A <b>Settlement Visa</b> is available for non-UK national marrying a British citizen or a person with permanent residency in the UK. The visa is valid for one year and candidates are usually interviewed. If the marriage is subsisting at the end of that year, then an application can be made to the Home Office for permanent residency. An application for British citizenship can be made after having been in the UK for three years if married to a British citizen (or five years if married to a non-British citizen).
USA	A child born in the US is entitled to	The spouse is given 90 days entry status and

	<p>US citizenship. The parents do not get citizenship unless they have some legal basis for obtaining legal permanent resident status/otherwise meet the naturalisation eligibility requirements. The parents can take the child with them when they leave the country or arrange for someone to take care of the child in the US<sup>21</sup></p>	<p>given conditional permanent residence status based on marriage. The condition can be removed when re-interviewed two years later to make sure that the marriage is valid.</p> <p>The US offers naturalisation to spouses of US citizens three, rather than the more typical five, years after admission as a permanent resident. The US has marriage fraud provisions that help deter marriages made solely for immigration purposes.</p>
<i>New Zealand</i>		<p><b>Visitor visa</b> can be issued to fiancée/ fiancé of a New Zealand citizen and resident. If foreign nationals are married to a New Zealand citizen or resident, a New Zealand spouse can apply for a permanent visa provided that his/her foreign spouse meets <a href="#">HYPERLINK "/migration/home.html" \l "do-i-need-a-medical-certificat" health and character</a> requirements. New Zealand citizens and residents who have sponsored two or more spouses, have applied for spouse sponsoring within the last 5 years, or have a record of domestic violence are not eligible to apply for visa for spouses.</p> <p>After two years residency, the spouse is eligible for NZ citizenship.</p>
<i>France</i>	<p>A child born in France to foreign parents automatically becomes a French national at the age of majority (18). If a child is over 13, he/she can also attain citizenship with the parent's consent. If over 16, a request can be made for nationality. A third generation immigrant born in France is automatically entitled to French nationality.</p>	<p>Resident permit is given to foreigners married for at least one year rather than the usually 3 years to a French national, provided that the marriage is still subsisting, and that the spouse has maintained French nationality. An undocumented foreigner marrying a French national can not acquire French citizenship.<sup>22</sup> Foreign spouse may acquire naturalisation papers after two years. Within a year, the authority has the right to oppose the naturalisation process. France maintains strict measures against marriage of convenience.</p>
<i>Germany</i>	<p>If one parent has been a legal resident in Germany for at least 8 years permanently and has a permanent resident permit, children acquire German citizenship at the parent's request.<sup>23</sup></p>	<p>Aliens fulfilling the following requirements can be naturalised on request with the requirement of legal permanent residence for at least eight years.<sup>24</sup></p>
<i>Denmark</i>	<p>A child of non-Denmark citizen will not receive nationality at birth. Since 1999, young foreigners aged 18-23 with minimum 10 years of residence in Denmark (5 years within the last 6 years) can request naturalisation.</p>	<p>While seven years consecutive residency is required for a foreigner applying for naturalisation, a foreign spouse married to a Danish citizen can do so after 4-6 years of residence (depending on the length of marriage). Renunciation of previous nationality is required. More relaxed provisions for Nordic, or EU citizens are available.</p>
<i>Sweden</i>	<p>A child born to non-Swedish parents</p>	<p>Five consecutive years of residency for a</p>

	does not acquire nationality at birth. It is accessible by making a declaration when a child is between 21-23 years old. <sup>25</sup>	foreigner, but exception can be made for applicants marrying to Swedish citizen. More relaxed provisions for a Nordic or EU citizen. Previous citizenship will be lost.
Spain	Spain does not grant Spanish citizenship to a child born to non-Spanish citizens. A child can gain citizenship during the age of 18-20 by declaration. Residence requirement is a minimum of 1 year. A third generation foreigner is granted citizenship if one of the parents also is born in Spain.	A spouse of a Spanish national can acquire Spanish nationality after a one-year preferential period.  In order to avoid marriage of convenience, applicants are requested to prove the authenticity of the marriage (no <i>de facto/de juri</i> separation).
Greece	No entitlement to nationality on birth. When a child reaches 18, he/she can apply for naturalisation. The requirement that the applicant must lodge their naturalisation application 5 years prior does not apply to a Greece-born child. Naturalisation is not a right, but based on discretion.	There is a relaxed naturalisation requirement for spouses.
Italy	With continuous residence since birth, a child can apply for Italian citizenship at the age of 21.	Since 1992, spouses married to an Italian no longer receive automatic citizenship, however the spouse is entitled to apply for citizenship after six months residency in Italy, or three years of marriage.

20 Special consideration applies where a child's parents are EEA nationals who are exercising Treaty rights under European Community law.

21 Further, immigration judges have held that having a US citizen child is no bar to deportation. It may be a basis for obtaining a waiver of deportation only if the deportable alien has been in the US for more than 10 years and the deportation would cause extraordinary harm to the US citizen child. The US citizen child does not have the right to sponsor the parent until the child is 21 years of age.

22 When a couple applies to get married and one of them is an undocumented foreigner, the marriage can be postponed and investigated. The undocumented foreigner may be asked to leave France or be deported.

23 These children usually acquire the citizenship of their parents. Between ages 18-23, they have to opt for one or the other citizenship, dual citizenship is accepted only in exceptional circumstances and requires special procedures

24 However, spouses and children under age meeting extra requirements may be naturalised without fulfilling the minimum residence time, such as possession of a resident permit, no conviction of a major crime.

25 Requirements are 5 years of residency before the age of 16, and additional permanent residence between the age of 16-21. By the provision of Nordic Agreement of 1969, the period of residency in other Nordic countries is recognized by any Nordic countries at the acquisition of nationality (valid only the period spent before reaching 16 years old)

## Re: Citizenship Referendum

Rúnaí Aire

Mr Browne, Asst Secretary, has suggested that the following briefing material be made available to the Taoiseach's Department for use on today's Order of Business.

The Minister for Justice, Equality and Law Reform yesterday briefed the party spokespeople on the background to and the text of the Amendment of the Constitution Bill published today. He made clear to them the Government's commitment to the fullest debate on the Amendment of the Constitution Bill and its openness to consider fully any amendments that may be tabled to it.

He also outlined to them the proposed content of the draft implementing Bill and gave them copies of the summary document attached. He similarly indicated the Government's commitment to full debate on that Bill when it comes formally before the Oireachtas after the passage of the Referendum proposal, and willingness to consider all reasonable suggestions for amendment of those proposals.

In the Seanad last night, the Minister fleshed out the proposals and the background to them in the context of a debate of a Private Member's Motion.

A detailed explanatory document on the Referendum proposal, containing also the draft text of an implementing Bill, will be circulated to Deputies ~~later~~ <sup>today</sup>

this morning.

If required, copies of the attached can be circulated to Deputies for their information in advance of the more detailed explanatory document to be available later this morning.

Brian Ingoldsby  
Civil Law Reform Division  
8 April 2004

**Statement by the Minister for Justice, Equality and Law Reform on the Joint Declaration of the Parties to the British Irish Agreement regarding the Proposed Constitutional Referendum on the citizenship entitlements of Irish born children.**

The Minister for Justice, Equality and Law Reform welcomes the clarification that the joint declaration by both Governments brings to the debate on the forthcoming Referendum on the citizenship entitlements of Irish born children.

Both he and the Government are aware that the Referendum proposal is quite properly a matter for informed public and parliamentary debate. In that context he welcomes the legal certainty that the joint declaration brings and hope that its contents will inform future contributions by both members of the public and the Oireachtas alike.

The Joint Declaration confirms that it was never the intention of either party to the British Irish Agreement, which is an international treaty, that it should impose on either Government any obligation to confer nationality or citizenship on persons born in any part of the island of Ireland whose parents do not have sufficient connection with the island of Ireland. The Declaration states that the proposed amendment to Article 9 of the Constitution is not in breach of the Agreement or indeed the continuing obligation of good faith in the implementation of the Agreement.

The Minister wishes to emphasise that the "people of Northern Ireland" as defined in Annex 2 to the Agreement does not cover all persons born in Northern Ireland. Instead it covers all persons born in Northern Ireland who satisfy certain additional criteria. Those additional criteria are (a) one parent who is at the time of birth an Irish citizen or (b) one parent who is at the time of birth a British citizen or (c) one parent at the time of birth is otherwise entitled to reside in Northern Ireland without condition as to time.

It is clear therefore on reviewing the British Irish Agreement, that a joint enterprise, which was to confer rights of citizenship on the people of Northern Ireland to be citizens of either state or citizens of both states and which had a very particular meaning,

emphatically excluded the notion that somebody could go to Belfast, have a child and thereby become an Irish citizen. That was excluded from the joint understanding of both Governments.

The Minister also wishes to state that the legislation which he proposes to introduce - a draft of which has already been published - is more generous than the terms mandated by the British Irish Agreement.

It will, in addition to those whom we are obliged to cover under the British Irish Agreement, cover persons born in Northern Ireland to parents who are legally resident there at the time of birth for three of the last four years. Such a child is not entitled to British citizenship on that basis.

## Referendum

### Contribution for Minister's speech - PD Campaign Launch 25 May 2004

I have been criticised during the course of this campaign about changing my stance in relation to the reasons for the Referendum.

It has been stated that I seek change on the basis that it is wrong in principle that those with no connection with Ireland, other than birth on the territory, should be fixed with an entitlement to Irish citizenship. That is a true statement of what I believe and I make no apology for it.

It has been stated that I seek change on the basis that our citizenship laws, are capable of being exploited to enable the parents of an Irish born child to establish a strong claim to be allowed reside in the State solely on that basis. That is a true statement of what I believe because Judge Hardiman stated in the L&O case "the Minister who must reasonably be satisfied of the existence of a grave and substantial reason favouring deportation" in those cases. Between the beginning of 1999 and the end of 2003 10,335 non EEA national parents secured residency in the State on the **sole** basis that they had an Irish born child and, at present, there are over 9,000 non-EEA national parents who have indicated to me that they have Irish born citizen children and wish to remain in the State on the basis.

It has been stated that I seek change on the basis that our citizenship laws, which are unique in the European Union, are capable of being exploited to disadvantage our European neighbours. That is also a true statement of what I believe and the Advocate General's opinion in the Chen case is testament to the validity of my concerns.

It has been stated further that my concern relates to the strain placed both now and in the future on our maternity hospitals. That is also true and I will address that issue in a moment.



PD McDOWELL SPEECH.doc

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But let me say this. These are not four mutually exclusive considerations as some commentators have suggested. Isn't it as plain as night follows day that if our

citizenship laws are more generous than those of any other country in Europe then they will be exploited by those who arrange birth on the island of Ireland in circumstances where that would not otherwise occur with a view to acquiring residency in the State or indeed the European Union for the parents. Is'nt it also true that even if that is not the wish of the parents it certainly gives the Irish citizen child more options when he or she attains majority.

I promised I would return to the issue of births in our maternity hospitals. I should say at the outset that it is not the business of my Department to tour maternity hospitals interviewing mothers about their nationality or their intention following the birth of their children. Neither is it the business of our doctors and nurses in busy maternity hospitals to interrogate expectant mothers for the benefit of the Department of Justice, Equality and Law Reform. But in all walks of life one acquires information which is relevant to other specialist areas. In some cases, as in this case, there can be an unlikely interaction between two seemingly totally separate areas of public service.

I have placed in the Library of the Oireachtas copies of the documents relating to my dealings with senior management of the maternity hospitals. I would ask you to consider one thing. Why would senior management in our maternity hospitals be coming to see the Minister for Justice, Equality and Law Reform unless it was in relation to a matter which concerned the welfare of their patients? Why, nine months later, would one of my senior officials be invited to a meeting of the Joint Hospitals Committee of the three major Dublin maternity hospitals unless it was in relation to the same thing? On the basis of a superficial analysis, what more incongruous alliance could there be? The answer is simple. The strains being placed on maternity hospitals in relation to births to non national mothers were caused by our citizenship laws.

There are circumstances in which the pregnancy or otherwise of a non national mother is a relevant consideration in the provision of services by officials employed by my Department to non nationals generally. This, on the basis of a superficial analysis, seems like an unlikely confluence of functions. But I will tell you how it arises. Staff employed by the Department of Justice, Equality and Law Reform are

charged inter alia with arranging accommodation and interviews for asylum seekers. The medical condition of the applicant is a relevant consideration in that context. So my officials can tell me with certainty that that 58% of female asylum seekers over the age of sixteen are, by their own admission, pregnant which is an extraordinarily high rate in comparison to any normal population standards.

Now let me take a wider view which is not dependent on information gleaned by my officials in the course of their daily duties.

To put some perspective on the scale of the issue we are addressing, I will offer some figures which I have compiled by reference to the 2002 census of population and a nationality breakdown for all births in the Dublin maternity hospitals in 2003. I want to enter several caveats at this point. I believe a considerable number of migrants into Ireland who are in doubt about the legality of their status did not show up in the census figures. I also accept that there may be cultural differences between say the nations of Europe and the nations of Africa. But that does not explain how a non EU national mother is eight times more likely to give birth in the Dublin maternity hospitals than an EU national mother.

Commentators have made the point that many of the births could be to work permit holders. That indeed is a very good point and one which I also looked into with my officials. The top five countries for the grant and renewal of work permits during 2003 were Poland, Lithuania, Latvia, the Philippines and the Ukraine. The top five countries for births in our maternity hospitals were Nigeria, Romania, China, Philippines and South Africa. Only one of these countries, the Philippines, features in the top five countries for births to non-EU nationals in the Dublin maternity hospitals. So it is complete rubbish to say that there is a direct correlation between births in our maternity hospitals and the presence of work permit holders.

Mothers of over 120 non EU nationalities gave birth in the Dublin maternity hospitals in 2003. However, some 44% of births were to mothers of just two - Nigeria and Romania. It is no coincidence that Nigeria and Romania are regarded as causing the most difficulty from the point of view of illegal immigration. It is no coincidence that

virtually all of the the charters organised by the immigration authorities for the return of persons illegally in the State have been to both of those countries.

In 2003, there were 46 births to Polish mothers and 1,515 to Nigerian mothers in the Dublin maternity hospitals.

There were 73 births to Lithuanian mothers in the Dublin maternity hospitals in 2003 and there were 469 births to Romanian mothers.

The National Maternity Hospital had 251 deliveries which had not been booked or which had been booked within the previous ten days during 2003. Of those, 70 were to Irish nationals, eight were to EU nationals, 163 were to non-EU nationals and ten were unrecorded. I have seen this figure dismissed as irrelevant on the basis that almost half of the mothers in question were Irish. The figure would be irrelevant if it were the case that around half of the female population of childbearing age as a whole was Irish, but that is patently not the case as the earlier figures show.

These figures show that there is undoubtedly a strong correlation between certain forms of migration and certain patterns of child bearing in Ireland.

## **Backup Figures**

In 2002 there were 69,000 EU national females resident in the State according to the census. In 2003, there were 970 births to EU national mothers in the Dublin maternity hospitals, a birth rate of 1.4% of the total female population of EU nationality. This is approximately .4% higher than analogous comparison for Irish women - a factor which may be explained by the likelihood of our migrant EU population be younger and being more likely to be of childbearing age.

I will now turn to EU nationals. In 2002 there were 40,881 non-EU national females resident in the State according to the census. In 2003, there were 4,501 births to non-EU national mothers in the Dublin maternity hospitals, a birth rate of 11% of the total female population of non-EU nationality.

Based on those figures, the fertility rate among non EU nationals is eight times the fertility rate of EU nationals.

Chen Case

## Statement by Minister for Justice on Chen case

Wednesday 19th May 2004

*Statement by the Minister for Justice, Equality and Law Reform Michael McDowell TD in relation to the Chen case and forthcoming Citizenship Referendum*

The Opinion of the Advocate General of the ECJ in the Chen case is of profound significance from the point of view of Irish citizenship law.

Opponents of the Referendum are predictably trying to play down and minimise its implications. This does not surprise me - but it does disappoint me. The amount of wishful thinking and wilful blindness to the realities of the situation from that quarter in recent weeks, I think, done the public debate and the standards expected from those claiming expertise little or no credit.

If, as is usually the case, the ECJ follows the Advocate General's Opinion, there will be profoundly serious implications for this State. I had previously publicly identified the Chen case as one of the important factors which led me to believe, and the Government to agree, that the citizenship issue was of some degree of urgency. That was before the preliminary Opinion was given.

I was asked by some to delay the referendum until the final judgment became available. I rejected that suggestion precisely because to do so would be to land this State in an unnecessary crisis ? internally and externally .

While the judgment strictly speaking has no internal application within Ireland, it has very strong implications for our internal situation. In particular, it casts a very long shadow over the medium and long-term sustainability of an approach based on the L & O decision of the Supreme Court which was handed down in early 2003.

- Is it sustainable that Ireland would be the only country in the EU capable of deporting parents of an Irish-born child?
- Is it sustainable that such parents would have an incentive to migrate from Ireland to the rest of the EU to improve their chances of remaining within the EU?

Once the implications of Chen are widely disseminated and understood throughout Europe and further afield, it will be immediately apparent that birth of a child in Ireland can guarantee in certain circumstances the right to reside in the European Union. The legal advice given to Mrs Chen and on which she relied will be given to many, many people throughout the world. This will happen on the basis of the preliminary Opinion and will no await the final judgment.

In these circumstances, there is simply no persuasive reason to procrastinate on the decision that is posed for us by the citizenship referendum. On the contrary, the Government's

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PD McDowell on Chen.doc

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In these circumstances, there is simply no persuasive reason to procrastinate on the decision that is posed for us by the citizenship referendum. On the contrary, the Government's decision to hold the referendum on June 11th, which was motivated in part by our apprehensions about the Chen case, has been clearly vindicated.

It was right to factor the impending Chen case into the timing issue, and it is now a huge advantage that the Irish people will have a timely opportunity to take pre-emptive and corrective steps at a constitutional and legislative level.

The Advocate General's Opinion at paragraphs 124 and 125 and the footnotes to those paragraphs identifies the divergence between Irish law and Article 6 of the British Irish

Agreement of 1998 as the root cause of the problem. It also identifies the absolute ius soli principle as being in need of a condition of settled residence, which is exactly what the referendum will enable the Oireachtas to do.

### Simple Issue

I want to take this opportunity to re-state in simple terms the simple reasons why the referendum is necessary, reasonable and timely. I do so because I apprehend that we are going to have a rash of Lawyers Against The Amendment, Doctors Against The Amendment and other ad hoc bodies conjured up to attempt to give a mouth to mouth breath life into a cause which has atrophied and crumbled in the hands of the Politicians Against The Amendment who have fled the field in the aftermath of the Chen case.

- The referendum is not racist ? it is a necessary measure to deny would-be racists the opportunity to exploit public perceptions that our law is being exploited and abused.
- The referendum will bring our basic law into conformity with those of the rest of the EU. No other EU state has an absolute right to citizenship based on birth - and no other country is labelled racist on that account.
- The Amendment does not conflict with the British Irish Agreement - as has been solemnly declared by the Irish and UK Governments.
- The 11th June is the best date to hold it because the voter turn-out is likely to be larger and more representative than on a single-issue poll.
- The Government's proposal will leave no child stateless. Any child born in Ireland will be entitled to Irish citizenship if the child is not entitled to the citizenship of the child's parent(s).
- There will not be two constitutional categories of children any more than there are at present in the case of immigrant children - the Constitution, the law and the Courts protect the fundamental right of immigrant children and parents on the same basis as Irish citizens, as does the European Convention on Human Rights which is incorporated into our legal system.
- There is no need for another expert group to advise on the issue. An expert group chaired by TK Whitaker in 1996 already concluded that citizenship based on birth should not be an absolute right written into the Constitution.
- The Irish parliament was entitled to protect our citizenship law from this kind of exploitation from 1937 until 1998 ? we only want to restore that right to our parliament.
- Irish birth is being increasingly used to circumvent immigration laws of Ireland and other EU states and to confer legal status on persons with no long-term connection with Ireland.
- The preliminary ruling in the Chen case makes it necessary to take immediate action to forestall a crisis.
- Failure to take action creates serious problems for the State's maternity system and grave health risks for lately arrived pregnant women.
- The proposed amendment is reasonable, balanced and proportionate

## Response to Wm Binchy's article in *The Irish Times*, 27 May 2004

Professor Binchy's article in *The Irish Times* on 27 May headed "McDowell creating divided society" contains a number of assertions that cannot be allowed to go unchallenged.

His thesis seems to be that because the protection of the fundamental human rights of children (or people of any age for that matter) who are not nationals is based on statute law rather than explicitly spelt out in the Constitution, this protection is in some way diminished relative to the fundamental rights of citizens. This he seeks to back up with a 33-page academic paper pointed to by a web address. But the paper and the newspaper article both start off on the wrong foot: they deliberately and mistakenly equate human rights with constitutional rights and go on to imply that if your rights aren't enshrined in the Constitution then your rights are not safeguarded in Ireland. He puts it in a more convoluted way than that, but his bottom line is pretty much that.

But in my work as a lawyer advising clients, and now as a Government Minister formulating policy, I have to live in the real world. The question is not: "Are human rights protected by the Constitution, or is it merely by statute?" but rather: "Is there legal protection for human rights and how can they be enforced and vindicated?" The answer is yes: the human rights of everybody in the State are protected, some explicitly by the Constitution, some through the development by the Courts of the concept of "unenumerated" Constitutional rights and some by various Acts of the Oireachtas. In considering questions of human rights protection, the approach which confines attention to the Constitution alone and which ignores or minimises the existence of extensive jurisprudence and more importantly of substantial statutory provisions is a blinkered one; and arguments put into the public domain which are based on this blinkered approach are unhelpful to reasoned debate.

It would be extremely difficult for me to deal with arguments such as these that seek to obscure the reality of human rights protection in Ireland by wandering off into remote and arcane hypothesis were it not for the fact that such arguments are in any event, by the admission of those who make them, inconclusive. I have put this simple question to those who argue on these lines: point me to a single human right that Ireland denies at present, or will deny after the Referendum is carried, by its laws to the older, non-national, sibling of an Irish citizen child born in Ireland to a non-national family. I await an answer.

The logical conclusion of the argument sought to be made by Professor Binchy and those who agree with him is this: in order to protect fully the human rights of those in this State who are not Irish citizens, the law must make them all Irish citizens whether they like it or not. This is a patently unreasonable conclusion, and is the fruit of a patently untenable argument.

"Children playing in the same playgrounds will be separated into citizens and aliens": what sort of alarmist and emotive inaccuracy is this? The fact is that our playgrounds are full of non-national children happily playing with their Irish brothers and sisters, just as our workplaces are populated by Irish and non-national employees working side by side. Ireland protects and vindicates all of the human rights of all of them without favour, just as it did before 1998, when the entitlement of everyone to be an Irish citizen or not was a matter for statute law and not determined by the Constitution. This Referendum proposal merely restores to the Oireachtas in a limited way the power to determine the future acquisition and loss of Irish citizenship, a power which it had in an unfettered way up to 1998. It cannot be the case that this restoration of power to the Oireachtas to legislate for Irish citizenship traduces, or diminishes in any respect whatsoever, the human rights of anyone in the State. If it is so, then we had no business acceding to the Refugee Convention or ratifying the European Convention on Human Rights or the United Nations Convention on the Rights of the Child. The logic of that position would also be that an Irish citizen born abroad, whose

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But in my work as a lawyer advising clients, and now as a Government Minister formulating policy, I have to live in the real world. The question is not: "Are human rights protected by the Constitution, or is it merely by statute?" but rather: "Is there legal protection for human rights and how can they be enforced and vindicated?" The answer is yes: the human rights of everybody in the State are protected, some explicitly by the Constitution, some through the development by the Courts of the concept of "unenumerated" Constitutional rights and some by various Acts of the Oireachtas. In considering questions of human rights protection, the approach which confines attention to the Constitution alone and which ignores or minimises the existence of extensive jurisprudence and more importantly of substantial statutory provisions is a blinkered one; and arguments put into the public domain which are based on this blinkered approach are unhelpful to reasoned debate.

It would be extremely difficult for me to deal with arguments such as these that seek to obscure the reality of human rights protection in Ireland by wandering off into remote and arcane hypothesis were it not for the fact that such arguments are in any event, by the admission of those who make them, inconclusive. I have put this simple question to those who argue on these lines: point me to a single human right that Ireland denies at present, or will deny after the Referendum is carried, by its laws to the older, non-national, sibling of an Irish citizen child born in Ireland to a non-national family. I await an answer.

The logical conclusion of the argument sought to be made by Professor Binchy and those who agree with him is this: in order to protect fully the human rights of those in this State who are not Irish citizens, the law must make them all Irish citizens whether they like it or not. This is a patently unreasonable conclusion, and is the fruit of a patently untenable argument.

"Children playing in the same playgrounds will be separated into citizens and aliens": what sort of alarmist and emotive inaccuracy is this? The fact is that our playgrounds are full of non-national children happily playing with their Irish brothers and sisters, just as our workplaces are populated by Irish and non-national employees working side by side. Ireland protects and vindicates all of the human rights of all of them without favour, just as it did before 1998, when the entitlement of everyone to be an Irish citizen or not was a matter for statute law and not determined by the Constitution. This Referendum proposal merely restores to the Oireachtas in a limited way the power to determine the future acquisition and loss of Irish citizenship, a power which it had in an unfettered way up to 1998. It cannot be the case that this restoration of power to the Oireachtas to legislate for Irish citizenship traduces, or diminishes in any respect whatsoever, the human rights of anyone in the State. If it is so, then we had no business acceding to the Refugee Convention or ratifying the European Convention on Human Rights or the United Nations Convention on the Rights of the Child. The logic of that position would also be that an Irish citizen born abroad, whose

citizenship derives not from the Constitution but from statute, is on similarly shaky human rights ground when he or she is in Ireland.

There is some comfort for the Government side in Professor Binchy's concession that excluding people from Irish citizenship does not *necessarily* (my emphasis) breach their human rights under (for instance) the UN Convention on the Rights of the Child. There is more comfort in his assertion that Irish constitutional protection has to be seen in the wider perspective of international human rights. But I wish that he would also view Irish constitutional protection of human rights in the wider context of the robust statutory provisions already on our statute books in this regard.

In conclusion, then, here are some questions to the critics of this Referendum proposal:

- What human right of a non-national, child or adult, is less protected under Irish law by the fact that the person is not an Irish citizen?
- How is it that Ireland was able to offer human rights protection to all in the State before 1999, at a time when the entitlement to Irish citizenship was determined only by statute and not by the Constitution?
- If we are to offer full human rights protection to everybody in the State, does that mean we have to give Irish citizenship to everybody in the State?
- Can any state protect fully by its laws the human rights of any non-national in its territory without making them citizens first?

2004

Do Thag/Your Ref :  
Ár dTag/Our Ref :

To: CN=Alan F. Mulligan/O=JUSTICE@JUSTICE  
From: CN=Brian F. Ingoldsby/O=JUSTICE  
CC:  
BCC:  
Date: 31/05/2004 18:07:50

Subject: Minister's Article for IT

Herewith finished item for Minister's approval  
Brian  
----- Forwarded by Brian F. Ingoldsby/JUSTICE on 31/05/2004 18:01 -----

Your Ref :  
Our Ref : LR 24.1.7

## Citizenship Referendum: the sensible option

In an interview in *The Irish Times* on Saturday 29 May, the Archbishop of Dublin, Dr Diarmuid Martin, raised what I thought was an important matter of concern to the electorate when he said that it should be clearly and fully explained why a constitutional amendment was the only solution to what he said was “the high risk of non-national women being abused and exploited” by being sent here to have their babies.

At this stage it is now generally accepted that there is indeed a problem that needs to be addressed. Dr Martin’s acknowledgment that there is abuse and exploitation, coupled with the recent statements of those in the caring professions who are involved in providing maternity services to those who come from abroad, often at short notice, to give birth in Ireland, have persuaded all but the most blinkered opponents of the Referendum proposal that it is dealing with a real issue, not some hypothetical scope for abuse of Ireland’s citizenship laws. Add to that the facts and the likely outcome of the *Chen* case, whereby the most tenuous of links with Ireland could and probably will give rise to an EU right of residence, and we know that we are facing actual difficulties with the potential to grow in magnitude.

The Supreme Court's decision in the *L&O* case has been advanced as a solution; indeed, I had hoped that it would act as a disincentive, but it has not. The Supreme Court decided that the non-national parents of an Irish-born child did not have a right to live in Ireland by virtue of that fact alone; but it did not decide that the parents of such a child could not live in Ireland. In fact, Mr Justice Hardiman stated in that case that I as Minister “must reasonably be satisfied of the existence of a grave and substantial reason favouring deportation” in any particular case. This is by no means a *carte blanche* permitting the deportation of all such parents – and in any event the Supreme Court decision has not stopped the flow. The Advocate General’s opinion in the *Chen* case has strengthened the incentive to give birth in Ireland, even amongst those who wish to live in other European countries. Vulnerable women are undoubtedly, as Dr Martin indicates, being put under unfair pressure, at a critical time for their own health and the health of their babies, to travel here for the delivery.

It would be an unrealistic and inhumane option to place the immigration resources of the State on the border, and at our ports and airports, to repel pregnant women – even if that were possible under our immigration laws. Even if I were to consider this possibility, I have no doubt that Dr Martin would ask me if this was the only solution. But of course there is a more obvious and reasonable solution – a solution which operates in every other European Union state. The essence of that solution is to remove the incentive by changing the law so that the right to Irish citizenship wouldn’t arise automatically in every case – except of course that we can’t at the moment. The strong advice of the Attorney General is that, with the Constitution as it stands, any legislation brought forward which sought to limit or even defer a right to Irish citizenship for a person born in Ireland would fall foul of Article 2. The Oireachtas could have passed such legislation before 1999, in keeping with Article 9 of the Constitution which says that “the future acquisition and loss of Irish citizenship shall be determined in accordance with law”; but the new Article 2 effectively curtailed that general power to legislate.

Our only resource then, as a responsible Government obliged to address the issue, is to propose an amendment to the Constitution which will restore that power to legislate for the right to Irish citizenship for persons born in Ireland to parents neither of whom is an Irish citizen. This way, if the Referendum proposal is accepted, we will be leaving it to the Oireachtas to decide what the rules will be in those cases. The Government has already published in draft form what it will be asking the Oireachtas to enact. This is a very reasonable proposal that lawful residence of either non-national parent in Ireland for at least three of the four years preceding the birth will give the child an

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The proposal won't "penalise Filipino nurses" or anyone else who comes here to contribute to and share in our society. On the contrary, once the implementing legislation is in place, it will offer fitting recognition to non-nationals settled here by ensuring that their children born here have a right to Irish citizenship, and on a basis very much more favourable than prevails in any of our EU neighbours. It won't be racist; and anyone who supports discrimination based on ethnic characteristics should vote against it because there's nothing in it for them. The proposal won't trample on anyone's human rights: the human rights of everyone in the State, including the many non-national adults and children who already form part of Irish society, will continue to get the protection that Ireland owes to all its inhabitants not just arising out of the international instruments to which we have subscribed, but primarily because of the fundamental nature of the State based on the Constitution and the rule of law. And lastly, the proposal won't leave anyone without a nationality: anyone born here who doesn't acquire a right to the citizenship of either of its parents will automatically be an Irish citizen without further ado.

## Citizenship Referendum: the sensible solution

For many years Ireland has had as one of the pillars of its citizenship law the right to citizenship deriving from birth in Ireland (*jus soli*, the law of the soil). Until 1999, when the new Article 2 of the Constitution came into effect, this was a matter of statute law (the Irish Nationality and Citizenship Act 1956) and could be changed as necessary by the Oireachtas. The new Article 2, by giving every person born in the island of Ireland, its islands and its seas, the entitlement and birthright to be part of the Irish nation, removed that question from the power of the Oireachtas to make citizenship laws and elevated the *jus soli* principle to the Constitutional level. This was an important provision arising out of the Good Friday Agreement, designed to replace the claim for the reunification of the national territory that had existed in the former Articles 2 and 3.

It is now generally accepted that the automatic right to citizenship by birth in Ireland gives rise to a serious problem that needs to be addressed. It is undoubtedly an attractive proposition for a person who is not an EU national to be the parent of a child born in Ireland, who has thus a right to be an Irish and accordingly an EU citizen. There is growing public awareness that the existence of this law is putting pressure on non-national women, some of them in very vulnerable situations, to come to Ireland for their confinement. We have seen the recent statements of concern for the health of the mothers and babies involved, and for the stability of the maternity services, being made by members of the caring professions who are involved in those services. We have also seen the attraction for reasonably well-off parents to arrange their affairs so as to have their child born in Ireland, even if they have no particular immediate intention of staying here. The recent European Court of Justice case of *Chen* exemplifies this latter type, whereby a well-off parent with the most tenuous of links to Ireland has by arranging to have her child in Belfast in all probability succeeded in securing for herself an EU right of residence deriving from her child's Irish and EU citizenship.

Of course it is a perfectly understandable step to take. It is natural for people to want to better their situation, and for parents to seek the best for their children, and if they feel that they can do so by getting to Ireland for the birth, then it is no surprise that they will do so, even where the journey is left so late as to put the mothers or their unborn babies at risk. But it is nonetheless to my mind an abuse of Irish citizenship, an abuse which any responsible Government has a duty to address.

The Supreme Court's decision in the *L&O* case has been advanced as a solution; indeed, I had hoped that it would act as a disincentive, but it has not. The Supreme Court decided that the non-national parents of an Irish-born child did not have a right to live in Ireland by virtue of that fact alone; but it did not decide that the parents of such a child could not live in Ireland. In fact, Mr Justice Hardiman stated in that case that I as Minister "must reasonably be satisfied of the existence of a grave and substantial reason favouring deportation" in any particular case. This is by no means a *carte blanche* permitting the deportation of all such parents – and in any event the Supreme Court decision has not stopped the flow. The Advocate General's opinion in the *Chen* case has strengthened the incentive to give birth in Ireland, even amongst those who wish to live in other European countries. Vulnerable women are undoubtedly being put under unfair pressure, at a critical time for their own health and the health of their babies, to travel here for the delivery.

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*For detailed information on the Referendum proposal and the Government’s implementing proposals see  
<[http://www.justice.ie/80256E010039C5AF/vWeb/fJUSQ5YGK4R-en/\\$File/Government's+proposals.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/fJUSQ5YGK4R-en/$File/Government's+proposals.pdf)>*

26

Do Thag/Your Ref :  
Ár dTag/Our Ref :

To: CN=Alan F. Mulligan/O=JUSTICE@JUSTICE  
From: CN=Brian F. Ingoldsby/O=JUSTICE  
CC: CN=Michael R. Gleeson/O=JUSTICE@JUSTICE  
BCC:  
Date: 03/06/2004 18:13:59

Subject: Minister's Article for Examiner

Alan  
Herewith 900 words for your consideration.  
Brian  
----- Forwarded by Brian F. Ingoldsby/JUSTICE on 03/06/2004 18:07 -----

Our Ref : LR 24.1.7

## Regulating citizenship: Constitution or statute?

On Friday next the people of Ireland will decide a simple question: will you allow the Oireachtas to make laws that set out the rules for the entitlement to Irish citizenship of persons born in Ireland to non-national parents? A Yes vote will give that power to Parliament; a No vote means that things will continue as they are, with anyone born in Ireland automatically entitled to Irish citizenship no matter how tenuous the parents' links or how short the duration of their stay.

During the last fortnight, this newspaper has published news items which exemplify why we need this change. For many sensible people, it does not seem right that Irish citizenship can be acquired by the expedient of arranging to have one's child born in Ireland, giving rise (as we see in the *Chen* case) to potential claims for residence anywhere at all in the European Union, even though the parents have no connection with Ireland at all. It is perfectly reasonable for people to seek to gain whatever advantage they can for their children (and possibly themselves) by making opportunistic use of the present Irish law; but in principle it is not right that that should be possible. Nor is it right that mothers-to-be should be in the position where they are pressured into making the journey to Ireland in the late stages of pregnancy (as many do) in order to secure this advantage.

There has been much talk about how this proposal will render uncertain the rights of non-national children or leave them with less protection than for Irish children; but I have to say that the lines of argument used to bolster these propositions are far-fetched and unrealistic. It is the case that Ireland already has many thousands of children of many different nationalities living here and enjoying the same protection of their human rights as the Irish children with whom they go to school and play in the parks and playgrounds – indeed, the same protections as their Irish brothers or sisters in some cases. They enjoy these rights not just because Ireland is a party to and fully subscribes to its obligations under the UN Convention on the Rights of the Child; but primarily because of the fundamental nature of the State based on the Constitution and the rule of law. We've been party to that Convention since 1992 – at which time the right to be an Irish citizen was a matter of statute law only and could be changed by Act of the Oireachtas. The purpose of this amendment is to revert to that situation, and give back to the Oireachtas the power to legislate the rules for entitlement to Irish citizenship for children whose parents are non-nationals. If this proposal were to be in breach of the human rights of children, then we were also in breach of those human rights in 1992; and the only way to cure that defect would be to make all non-nationals in the State Irish citizens whether they were born here or not.

The Government has already published its proposed legislation in the form of a draft Bill; its main provision will be that where one of the non-national parents of a child born in Ireland had been living here lawfully for at least three of the preceding four years, the child will be entitled to be an Irish citizen. This is a sensible and generous proposal designed to ensure proper recognition for families who have settled in Ireland and are contributing to and sharing in our society and our economy. We're delighted that so many people now see Ireland as a country where they can come to seek their fortune, establish themselves and build a way of life: it's a reflection of our now thriving economy after a century and a half of emigration and struggle. Our new citizenship laws will reinforce that welcome in a fair and balanced way. The Bill will have to go through the Oireachtas before it becomes law, and I have asked the Human Rights Commission for their observations on it so that the debate can be fully informed.

The change will leave no child born here without a nationality. If through some oddity of the citizenship laws of the parents, or because both of them are stateless, the child does not have an entitlement to the nationality of either parent, then by our laws that child will be an Irish citizen. The proposal won't discriminate between children of different nationality or ethnic background: all that will matter is the duration of lawful residence of one of the parents in Ireland. Contrary to the

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The Government has already published its proposed legislation in the form of a draft Bill; its main provision will be that where one of the non-national parents of a child born in Ireland had been living here lawfully for at least three of the preceding four years, the child will be entitled to be an Irish citizen. This is a sensible and generous proposal designed to ensure proper recognition for families who have settled in Ireland and are contributing to and sharing in our society and our economy. We're delighted that so many people now see Ireland as a country where they can come to seek their fortune, establish themselves and build a way of life: it's a reflection of our now thriving economy after a century and a half of emigration and struggle. Our new citizenship laws will reinforce that welcome in a fair and balanced way. The Bill will have to go through the Oireachtas before it becomes law, and I have asked the Human Rights Commission for their observations on it so that the debate can be fully informed.

The change will leave no child born here without a nationality. If through some oddity of the citizenship laws of the parents, or because both of them are stateless, the child does not have an entitlement to the nationality of either parent, then by our laws that child will be an Irish citizen. The proposal won't discriminate between children of different nationality or ethnic background: all that will matter is the duration of lawful residence of one of the parents in Ireland. Contrary to the

crowding of the DUP, it will not affect the Good Friday Agreement in any respect: the people of Northern Ireland will continue to be able to “identify themselves and be accepted as British, or Irish, or both, as they may so choose”, in the words of the British-Irish Agreement.

One last point: contrary to the scaremongering of many opponents of this Referendum proposal, the debate and the campaign has so far been conducted without a trace of the racism that it was predicted to inflame. This is a credit to the good sense of the Irish people, and I am confident that that good sense will be reflected in the outcome of Friday’s poll.

*For detailed information on the Referendum proposal and the Government’s implementing proposals see  
<[http://www.justice.ie/80256E010039C5AF/vWeb/fJUSQ5YGK4R-en/\\$File/Government's+proposals.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/fJUSQ5YGK4R-en/$File/Government's+proposals.pdf)>*

Ár dTag/Our Ref : Our Ref : LR 24.1.7

**Response to Wm Binchy's article in *The Evening Herald*, 9 June 2004**

Professor Binchy's article in yesterday's *Evening Herald* claims that my stand on the citizenship Referendum proposal is "astounding". That doesn't stand up to any sort of scrutiny.

He says that this proposal "targets innocent children", and claims that it is in breach of Ireland's obligations under the UN Convention on the Rights of the Child. He is wrong on both counts. Ireland has been a Party to that Convention since 1991, and we were able to ratify it then because our laws and practices comply with all of the requirements of that Convention. Our laws protect fully the human rights of any child (or adult) who is in the State, whether they are Irish or not. There are many thousands of kids of all nationalities attending school and playing in our playgrounds alongside children who are Irish – sometimes with Irish brothers and sisters. We don't say in our laws that little Diarmuid's human rights are fully protected, but that little Dimitri's are only a bit protected because he's not Irish. The fact is that they both have equal protection and guarantees of their human rights. And that's not just because we subscribe to international instruments like the European Convention on Human Rights or the UN Convention on the Rights of the Child; it's because of the civil nature of Irish society based on the Constitution and the rule of law.

What we are being asked to do on Friday is to decide whether or not we want to give our elected Parliament the power (as they had all along until 1999) to make laws that set out the conditions under which the children born in Ireland to non-national parents will have the automatic entitlement to Irish citizenship that everybody born here has at present. If Ireland was able to sign up to the European Convention on Human Rights (which we did in 1953, over 50 years ago) and to the UN Convention on the Rights of the Child before 1999, when all citizenship entitlements were decided by Acts of the Oireachtas, then changing things now so that the Oireachtas will once again have that responsibility cannot possibly breach anyone's human rights. It is simply wrong of William Binchy to try to give that impression, especially when in his academic writings on this matter he concedes that excluding people from Irish citizenship does not necessarily breach their human rights.

He quotes me as claiming that freedom of movement under European law is being compromised by our citizenship laws; a claim that I have never made. I do know that the case before the European Court of Justice, where Mrs Chen, a Chinese woman living in Cardiff was advised to have her baby in Belfast so that it would be an Irish citizen, has resulted in a situation where Mrs Chen now has a strong claim to be permitted to live in the UK (or indeed in any other EU country that she chooses) against the wishes of the immigration authorities there. I am concerned that the final decision in this case, when made, may result in difficulties for other EU states as a result of our citizenship laws. I am also concerned generally that because of our present laws, people with no connection to Ireland can arrange their affairs so as to follow in Mrs Chen's footsteps. It is to my mind an abuse of Irish citizenship. And Government has a duty to take what steps it can to stop that abuse. That's why we are proposing this Referendum, so that the Dáil and Seanad will be able to legislate a sensible set of rules.

The rules the Government has in mind will give automatic entitlement to Irish citizenship to the children of Filipino nurses, or anyone else who is established here lawfully and sharing in Irish society, if one of the parents has been here for at least three out of the four years preceding the birth. That is a proper mark of the welcome we have for people who come here to seek their fortune and make a new life – just as so many of our own went abroad in their time to do the same in far-flung places. By any international standard, that is a generous approach and one of which in years to come I am confident that Ireland can be proud.

Our approach is fully compatible with the Good Friday Agreement, is not one bit racist, and will not leave any child born here without a nationality. A Yes vote on Friday will not affect in the slightest the strong human rights protections that Ireland already offers and continues to offer to everybody in the State no matter what their nationality. I urge support for this proposal so as to enable our lawmakers to remove the abuse of Irish citizenship and deal in a spirit of generosity with the families of those who have settled among us.

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**Oifig an Aire Dlí agus Cirt, Comhionnanais agus Athchóirithe Dlí: Office of the Minister for  
Justice, Equality and Law Reform**

**Aide-Mémoire for the Government**

**28 June 2004**

**Steps to be taken following acceptance of Citizenship Referendum proposal**

**Purpose of Aide-Mémoire**

1. The Minister for Justice, Equality and Law Reform wishes to inform the Government of the proposed timetable for the implementing citizenship legislation following the acceptance by the People of the Referendum proposal in that regard.
2. The President signed the 27<sup>th</sup> Amendment of the Constitution Bill into law on 24 June 2004. The way is now constitutionally clear to bring forward a Bill on the lines of the draft approved by the Government in its decision (S. 180/20/10/0739) of 6 April 2004.
3. Following is an outline of the matters that have to be addressed as part of the process of developing the draft Bill published as part of the Government's Proposals document into a Bill to be initiated in the Dáil or Seanad.

**Technical aspects**

4. There are a number of technical aspects of the draft Bill as published that need to be addressed further as follows:
  - the practicalities of asserting a verifiable claim to entitlement to Irish citizenship based on lawful residence of a parent in the North need to be teased out with the UK immigration authorities before the provisions of the Bill relating to this can be settled with Parliamentary Counsel;
  - the question of provisions to rule out the operation of an investment-based naturalisation scheme (Senator Quinn's PMB) needs to be settled with Parliamentary Counsel;
  - other aspects of the present Irish Nationality and Citizenship Act (e.g. citizenship of foundling children, citizenship rights of births on Irish-registered vessels) need to be examined to make sure that no lacunae will exist in the wake of the Constitutional change, or otherwise to avail of the opportunity for updating.

In addition, matters may arise out of the consultations signalled below which may give rise to further drafting changes.

**Consultations**

5. The Government is committed to holding discussions with the SDLP on the content of the Bill. The timing and form of those discussions will need to be settled in discussions with the Minister, but it would be useful if they could be complete within the coming weeks, always having regard to the sensitivities (see *Timetable* below).
6. The Irish Human Rights Commission was asked in early April to give observations on the draft Bill and have indicated that they will have observations. In the immediate wake of the change to the Constitution made by referendum, it would be appropriate to write again to the Commission seeking early observations (see *Timetable* below) so that any observations can be taken into account in settling the final form of the legislation.
7. It may be that other bodies will also wish to be consulted on the draft Bill.

**Timetable**

8. On the basis that there is a need to proceed with the legislation as a matter of priority, the following is offered by the Minister as a tentative timetable.

<b>Step</b>	<b>To be achieved by:</b>
Finalise consultation process	Mid July 2004
Complete technical discussions with UK authorities	Mid July 2004
Agree final draft with Parliamentary Counsel and circulate draft Memo to Govt	Mid September 2004
Obtain Government approval to text of Bill and initiate in (say) Dáil	End September 2004
Passage by Dáil (assumes resumption in late September/early October)	End October 2004
Passage by Seanad and enactment	Mid November 2004
Complete administrative arrangements, make regulations (if any) and commence Act	Mid December 2004

21/5/04 29

## **Statement by the Minister for Justice, Equality and Law Reform in relation to the Chen case and forthcoming Citizenship Referendum**

The Opinion of the Advocate General of the ECJ in the Chen case is of profound significance from the point of view of Irish citizenship law. Opponents of the Referendum are predictably trying to play down and minimise its implications. This does not surprise me - but it does disappoint me. The amount of wishful thinking and wilful blindness to the realities of the situation from that quarter in recent weeks has, I think, done the public debate and the standards expected from those claiming expertise little or no credit.

If, as is usually the case, the ECJ follows the Advocate General's Opinion, there will be profoundly serious implications for this State.

I had previously publicly identified the Chen case as one of the important factors which led me to believe, and the Government to agree, that the citizenship issue was of some degree of urgency. That was before the preliminary Opinion was given.

I was asked by some to delay the referendum until the final judgment became available. I rejected that suggestion precisely because to do so would be to land this State in an unnecessary crisis - internally and externally.

While the judgment strictly speaking has no internal application within Ireland, it has very strong implications for our internal situation. In particular, it casts a very long shadow over the medium and long-term sustainability of an approach based on the L & O decision of the Supreme Court which was handed down in early 2003.

- Is it sustainable that Ireland would be the only country in the EU capable of deporting parents of an Irish-born child?
- Is it sustainable that such parents would have an incentive to migrate from Ireland to the rest of the EU to improve their chances of remaining within the EU?

Once the implications of Chen are widely disseminated and understood throughout Europe and further afield, it will be immediately apparent that birth of a child in Ireland can guarantee in certain circumstances the right to reside in the European Union. The legal advice given to Mrs Chen and on which she relied will be given to many, many people throughout the world. This will happen on the basis of the preliminary Opinion and will not await the final judgment.

In these circumstances, there is simply no persuasive reason to procrastinate on the decision that is posed for us by the citizenship referendum. On the contrary, the Government's decision to hold the referendum on June 11th, which was motivated in part by our apprehensions about the Chen case, has been clearly vindicated.

It was right to factor the impending Chen case into the timing issue, and it is now a huge advantage that the Irish people will have a timely opportunity to take pre-emptive and corrective steps at a constitutional and legislative level.

The Advocate General's Opinion at paragraphs 124 and 125 and the footnotes to those paragraphs identifies the divergence between Irish law and Article 6 of the British Irish Agreement of 1998 as the root cause of the problem. It also identifies the absolute ius soli principle as being in need of a condition of settled residence, which is exactly what the referendum will enable the Oireachtas to do.

### Simple Issue

I want to take this opportunity to re-state in simple terms the simple reasons why the referendum is necessary, reasonable and timely.

I do so because I apprehend that we are going to have a rash of Lawyers Against The Amendment, Doctors Against The Amendment and other ad hoc bodies conjured up to attempt to give a mouth to mouth breath life into a cause which has atrophied and crumbled in the hands of the Politicians Against The Amendment who have fled the field in the aftermath of the Chen case.

- The referendum is not racist - it is a necessary measure to deny would-be racists the opportunity to exploit public perceptions that our law is being exploited and abused.
- The referendum will bring our basic law into conformity with those of the rest of the EU. No other EU state has an absolute right to citizenship based on birth - and no other country is labelled racist on that account.
- The Amendment does not conflict with the British Irish Agreement - as has been solemnly declared by the Irish and UK Governments.
- The 11th June is the best date to hold it because the voter turn-out is likely to be larger and more representative than on a single-issue poll.
- The Government's proposal will leave no child stateless. Any child born in Ireland will be entitled to Irish citizenship if the child is not entitled to the citizenship of the child's parent(s).
- There will not be two constitutional categories of children any more than there are at present in the case of immigrant children - the Constitution, the law and the Courts protect the fundamental rights of immigrant children and parents on the same basis as Irish citizens, as does the European Convention on Human Rights which is incorporated into our legal system.
- There is no need for another expert group to advise on the issue. An expert group chaired by TK Whitaker in 1996 already concluded that citizenship based on birth should not be an absolute right written into the Constitution.
- The Irish parliament was entitled to protect our citizenship law from this kind of exploitation from 1937 until 1998 - we only want to restore that right to our parliament.
- Irish birth is being increasingly used to circumvent immigration laws of Ireland and other EU states and to confer legal status on persons with no long-term connection with Ireland.
- The preliminary ruling in the Chen case makes it necessary to take immediate action to forestall a crisis.
- Failure to take action creates serious problems for the State's maternity system and grave health risks for lately arrived pregnant women.
- The proposed amendment is reasonable, balanced and proportionate.

Department of Justice, Equality and Law Reform  
An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí



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- There is no need for another expert group to advise on the issue. An expert group led by Sir Alan Whitaker in 1996 already concluded that citizenship based on birth should now be written into the Constitution.
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- The proposed amendment is reasonable, balanced and proportionate.

[Eolas faoin  
Roinn]

## [Struchtúr na hEagraíochta]

## [Ionad na Meán]

[Reachtaíocht] [Foilseach]

[Ceisteanna  
Parlaimínte]

## [Ceisteanna Coitianta]

## Green Party Press Office

19 October 2004

Green Party calls for residency rights after European Court rules on right to remain in Chen case

The Green Party has called on the Irish Government to grant full residency rights to the families of children born in Ireland before February 19th 2003, when a scheme that permitted residency based on the parentage of an Irish-born child was abolished.

The call comes in the light of today's ruling by the European Court of Justice in Luxembourg that Britain's refusal to allow a Chinese woman, Man Levette Chen, and her Belfast-born daughter to remain permanently is illegal under EU law.

The scheme's abolition came shortly after the Supreme Court's judgement of 23rd January 2003 in the cases of L&O in which the Court confirmed that the Minister for Justice was entitled to deport the non-national parents of an Irish-born child.

Green Party Justice spokesperson Ciarán Cuffe TD stated today that. "Many families are living in limbo. They deserve clarity on this issue. Some families have been waiting years for a decision and they deserve to have their cases fast-tracked. The Minister should now indicate that the families of those born before the scheme's abolition should be allowed remain in Ireland.

"I am also calling on the Minister to clarify whether he has deported any families that had claimed residency under the scheme."

[Back to News Headlines](#)

## Press Conference: Notes for Minister

### ***Chen case***

Some have represented the *Chen* case as having rescued the Government's campaign on this referendum issue. Let me assure your readers that the *Chen* case, like the situation in maternity hospitals, is a mere exemplifier of the issue of principle involved. The fact is that people with no connection with the State can arrange their affairs so as to acquire Irish citizenship for their children born in Ireland, and are doing so on well-paid-for advice whether from lawyers, as in the case of Mrs Chen, or from people-snugglers as in other cases. There is scope for abuse of Irish citizenship, and it is a scope that is being availed of. Advocate General Tizzano's opinion was that it was not an abuse of EU law, and I am prepared to accept that, but I hold firm in the belief that it was an abuse of Irish citizenship, an abuse that is capable of being replicated. That is the principle that drives this Referendum proposal, and any responsible Government owes it to Irish society (which consists of all of us living here, whether Irish or non-national) to seek to fix the problem at the best opportunity that presents itself.

### **Citizenship and statelessness**

Lots of people born in Ireland choose not to exercise the entitlement to Irish citizenship that at present they all acquire on birth. That's because they (or their parents on their behalf) prefer to confine their citizenship to that of the country of their parents' birth. In very rare cases, the law of the parents' nationality is such that the child born here does not acquire a right of citizenship by descent: in those cases Irish law ensures that they are not left stateless by declaring that the child is an Irish citizen: a step further than just saying that the child is entitled to Irish citizenship. That has historically been the case, and that will continue to be the case. Even if there were a desire (which there isn't) to resile from that position, our subscription to a number of international instruments would preclude our even considering it as an option. These are the UN Convention on the reduction of statelessness of 1961 and more recently the UN Convention on the Rights of the Child, which Ireland ratified in 1991.

### **Human rights of non-national children**

The human rights of people in Ireland are guaranteed and protected by virtue of their presence in the State, irrespective of their nationality. It has been suggested by some commentators that because the human rights of non-nationals are not specifically referred to in the Constitution, those rights must be in some way less protected or inferior than the human rights of citizens that are specifically adverted to in the Constitution. This argument is spurious. Were that the case, we would be unable to ratify the European Convention on Human Rights, to which Ireland has been a party since 1953,

the human rights of non-nationals are not specifically referred to in the Constitution, those rights must be in some way less protected or inferior than the human rights of citizens that are specifically adverted to in the Constitution. This argument is spurious. Were that the case, we would be unable to ratify the European Convention on Human Rights, to which Ireland has been a party since 1953,

## Regulating citizenship: Constitution or statute?

On Friday next the people of Ireland will decide a simple question: will you allow the Oireachtas to make laws that set out the rules for the entitlement to Irish citizenship of persons born in Ireland to non-national parents? A Yes vote will give that power to Parliament; a No vote means that things will continue as they are, with anyone born in Ireland automatically entitled to Irish citizenship no matter how tenuous the parents' links or how short the duration of their stay.

During the last fortnight, this newspaper has published news items which exemplify why we need this change. For many sensible people, it does not seem right that Irish citizenship can be acquired by the expedient of arranging to have one's child born in Ireland, giving rise (as we see in the *Chen* case) to potential claims for residence anywhere at all in the European Union, even though the parents have no connection with Ireland at all. It is perfectly reasonable for people to seek to gain whatever advantage they can for their children (and possibly themselves) by making opportunistic use of the present Irish law; but in principle it is not right that that should be possible. Nor is it right that mothers-to-be should be in the position where they are pressured into making the journey to Ireland in the late stages of pregnancy (as many do) in order to secure this advantage.

There has been much talk about how this proposal will render uncertain the rights of non-national children or leave them with less protection than for Irish children; but I have to say that the lines of argument used to bolster these propositions are far-fetched and unrealistic. It is the case that Ireland already has many thousands of children of many different nationalities living here and enjoying the same protection of their human rights as the Irish children with whom they go to school and play in the parks and playgrounds – indeed, the same protections as their Irish brothers or sisters in some cases. They enjoy these rights not just because Ireland is a party to and fully subscribes to its obligations under the UN Convention on the Rights of the Child; but primarily because of the fundamental nature of the State based on the Constitution and the rule of law. We've been party to that Convention since 1992 – at which time the right to be an Irish citizen was a matter of statute law only and could be changed by Act of the Oireachtas. The purpose of this amendment is to revert to that situation, and give back to the Oireachtas the power to legislate the rules for entitlement to Irish citizenship for children whose parents are non-nationals. If this proposal were to be in breach of the human rights of children, then we were also in breach of those human rights in 1992; and the only way to cure that defect would be to make all non-nationals in the State Irish citizens whether they were born here or not.

The Government has already published its proposed legislation in the form of a draft Bill; its main provision will be that where one of the non-national parents of a child born in Ireland had been living here lawfully for at least three of the preceding four years, the child will be entitled to be an Irish citizen. This is a sensible and generous proposal designed to ensure proper recognition for families who have settled in Ireland and are contributing to and sharing in our society and our economy. We're delighted that so many people now see Ireland as a country where they can come to seek their fortune, establish themselves and build a way of life: it's a reflection of our now thriving economy after a century and a half of emigration and struggle. Our new citizenship laws will reinforce that welcome in a fair and balanced way. The Bill will have to go through the Oireachtas before it becomes law, and I have asked the Human Rights Commission for their observations on it so that the debate can be fully informed.

The change will leave no child born here without a nationality. If through some oddity of the citizenship laws of the parents, or because both of them are stateless, the child does not have an entitlement to the nationality of either parent, then by our laws that child will be an Irish citizen. The proposal won't discriminate between children of different nationality or ethnic background: all that will matter is the duration of lawful residence of one of the parents in Ireland. Contrary to the

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## Regulating citizenship: Constitution or statute?

On Friday next the people of Ireland will decide a simple question: will you allow the Oireachtas to make laws that set out the rules for the entitlement to Irish citizenship of persons born in Ireland to non-national parents? A Yes vote will give that power to Parliament; a No vote means that things will continue as they are, with anyone born in Ireland automatically entitled to Irish citizenship no matter how tenuous the parents' links or how short the duration of their stay.

During the last fortnight, this newspaper has published news items which exemplify why we need this change. For many sensible people, it does not seem right that Irish citizenship can be acquired by the expedient of arranging to have one's child born in Ireland, giving rise (as we see in the *Chen* case) to potential claims for residence anywhere at all in the European Union, even though the parents have no connection with Ireland at all. It is perfectly reasonable for people to seek to gain whatever advantage they can for their children (and possibly themselves) by making opportunistic use of the present Irish law; but in principle it is not right that that should be possible. Nor is it right that mothers-to-be should be in the position where they are pressured into making the journey to Ireland in the late stages of pregnancy (as many do) in order to secure this advantage.

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crowding of the DUP, it will not affect the Good Friday Agreement in any respect: the people of Northern Ireland will continue to be able to “identify themselves and be accepted as British, or Irish, or both, as they may so choose”, in the words of the British-Irish Agreement.

One last point: contrary to the scaremongering of many opponents of this Referendum proposal, the debate and the campaign has so far been conducted without a trace of the racism that it was predicted to inflame. This is a credit to the good sense of the Irish people, and I am confident that that good sense will be reflected in the outcome of Friday’s poll.

*For detailed information on the Referendum proposal and the Government’s implementing proposals see  
<http://www.justice.ie/80256E010039C5AF/vWeb/f1JUSQ5YGK4R-en/\$File/Government's+proposals.pdf>*

## Citizenship Referendum: the sensible solution

For many years Ireland has had as one of the pillars of its citizenship law the right to citizenship deriving from birth in Ireland (*jus soli*, the law of the soil). Until 1999, when the new Article 2 of the Constitution came into effect, this was a matter of statute law (the Irish Nationality and Citizenship Act 1956) and could be changed as necessary by the Oireachtas. The new Article 2, by giving every person born in the island of Ireland, its islands and its seas, the entitlement and birthright to be part of the Irish nation, removed that question from the power of the Oireachtas to make citizenship laws and elevated the *jus soli* principle to the Constitutional level. This was an important provision arising out of the Good Friday Agreement, designed to replace the claim for the reunification of the national territory that had existed in the former Articles 2 and 3.

It is now generally accepted that the automatic right to citizenship by birth in Ireland gives rise to a serious problem that needs to be addressed. It is undoubtedly an attractive proposition for a person who is not an EU national to be the parent of a child born in Ireland, who has thus a right to be an Irish and accordingly an EU citizen. There is growing public awareness that the existence of this law is putting pressure on non-national women, some of them in very vulnerable situations, to come to Ireland for their confinement. We have seen the recent statements of concern for the health of the mothers and babies involved, and for the stability of the maternity services, being made by members of the caring professions who are involved in those services. We have also seen the attraction for reasonably well-off parents to arrange their affairs so as to have their child born in Ireland, even if they have no particular immediate intention of staying here. The recent European Court of Justice case of *Chen* exemplifies this latter type, whereby a well-off parent with the most tenuous of links to Ireland has by arranging to have her child in Belfast in all probability succeeded in securing for herself an EU right of residence deriving from her child's Irish and EU citizenship.

Of course it is a perfectly understandable step to take. It is natural for people to want to better their situation, and for parents to seek the best for their children, and if they feel that they can do so by getting to Ireland for the birth, then it is no surprise that they will do so, even where the journey is left so late as to put the mothers or their unborn babies at risk. But it is nonetheless to my mind an abuse of Irish citizenship, an abuse which any responsible Government has a duty to address.

The Supreme Court's decision in the *L&O* case has been advanced as a solution; indeed, I had hoped that it would act as a disincentive, but it has not. The Supreme Court decided that the non-national parents of an Irish-born child did not have a right to live in Ireland by virtue of that fact alone; but it did not decide that the parents of such a child could not live in Ireland. In fact, Mr Justice Hardiman stated in that case that I as Minister "must reasonably be satisfied of the existence of a grave and substantial reason favouring deportation" in any particular case. This is by no means a *carte blanche* permitting the deportation of all such parents – and in any event the Supreme Court decision has not stopped the flow. The Advocate General's opinion in the *Chen* case has strengthened the incentive to give birth in Ireland, even amongst those who wish to live in other European countries. Vulnerable women are undoubtedly being put under unfair pressure, at a critical time for their own health and the health of their babies, to travel here for the delivery.

It would be an unrealistic and inhumane option to place the immigration resources of the State on the border, and at our ports and airports, to repel pregnant women – even if that were possible under our immigration laws. Even if I were to consider this possibility, I have no doubt that the public would ask me if this was the only solution. But of course there is a more obvious and reasonable solution – a solution which operates in every other European Union state. The essence of that solution is to remove the incentive by changing the law so that the right to Irish citizenship wouldn't arise automatically in every case – except of course that we can't at the moment. The strong advice of the Attorney General is that, with the Constitution as it stands, any legislation

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brought forward which sought to limit or even defer a right to Irish citizenship for a person born in Ireland would fall foul of Article 2. The Oireachtas could have passed such legislation before 1999, in keeping with Article 9 of the Constitution which says that “the future acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law”; but the new Article 2 effectively curtailed that general power to legislate.

Our only resource then, as a responsible Government obliged to address the issue, is to propose an amendment to the Constitution which will restore that power to legislate for the right to Irish citizenship for persons born in Ireland to parents neither of whom is an Irish citizen. This way, if the Referendum proposal is accepted, we will be leaving it to the Oireachtas to decide what the rules will be in those cases. The Government has already published in draft form what it will be asking the Oireachtas to enact. This is a very reasonable proposal that lawful residence of either non-national parent in Ireland for at least three of the four years preceding the birth will give the child an automatic right to claim Irish citizenship. It’s not the final word on the matter: the Human Rights Commission has been asked to give its observations on the proposed legislation, and there will be consultations with the parties to the Good Friday Agreement in advance of the legislation too. As with any other legislation, there will be full opportunity for the detail to be teased out in debate in the Dáil and Seanad. And of course there will be the continuing power of the Oireachtas to amend, replace or repeal its own statutes as it sees fit in the future.

The proposal won’t “penalise Filipino nurses” or anyone else who comes here to contribute to and share in our society. On the contrary, once the implementing legislation is in place, it will offer fitting recognition to non-nationals settled here by ensuring that their children born here have a right to Irish citizenship, and on a basis very much more favourable than prevails in any of our EU neighbours. It won’t be racist; and anyone who supports discrimination based on ethnic characteristics should vote against it because there’s nothing in it for them. The proposal won’t trample on anyone’s human rights: the human rights of everyone in the State, including the many non-national adults and children who already form part of Irish society, will continue to get the protection that Ireland owes to all its inhabitants – not just arising out of the international instruments to which we have subscribed, but primarily because of the fundamental nature of the State based on the Constitution and the rule of law. And lastly, the proposal won’t leave anyone without a nationality: anyone born here who doesn’t acquire a right to the citizenship of either of its parents will automatically be an Irish citizen without further ado.

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